

# Planning Agreement

The Council of the City of Sydney

and

Kubis Rosebery Pty Ltd

ABN 23 130 500 060

Property: 102-106 Dunning Avenue, Rosebery

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THIS PLANNING AGREEMENT is made on

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) Kubis Rosebery Pty Ltd ABN 23 130 500 060 of 102-106 Dunning Avenue, Rosebery (the Developer).

BACKGROUND

- (A) The Developer is the owner of the Land and intends to undertake the Development on the Land.
- (B) In order to carry out the Development, it is necessary, among other things, to amend the Sydney LEP.
- (C) On 16 December 2016 the Developer submitted the Request to the City. As part of the Request, the Developer sought that the City prepare, and lodge with the Department of Environment and Planning, a Planning Proposal.
- (D) If the Sydney LEP is amended pursuant to the Planning Proposal, the Developer proposes to lodge:
  - (1) a Development Application with the City; and
  - (2) a Subdivision Application (if the Development Application does not seek development consent for the strata Subdivision of the Land).
- (E) In respect of any such Development Application, the Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document, if Development Consent is granted.

THIS DEED WITNESSES:

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 clause 4 of Part 2 of the Conveyancing (Sale of Land) Regulation 2010 (NSW).

Additional Affordable Housing Floor Space means any floor space of Affordable Housing provided within the Development in addition to the Affordable Housing Floor Space.

Additional DA Floor Space means the greater of:

- (a) the difference (if any) between the Gross Floor Area approved for the Development under the Development Consent and the maximum Gross

Floor Area permissible for the Development under the Floor Space Ratio Map of the Unamended Sydney LEP; and

- (b) 0 square metres.

Additional DA Floor Space Value is an amount of money calculated as follows:

Additional Floor Space Rate (R2) x Additional DA Floor Space

where the Additional Floor Space Rate (R2) is the same as the R2 rate set out in the City's Guide to Preparing Site Specific Planning Proposal Requests in the City of Sydney Employment Lands Investigation Areas as updated from time to time and published on the City's website.

Affordable Housing means dwellings of affordable housing (as defined in the Act), provided within the Development.

Affordable Housing Covenant means a public positive covenant in respect of an allotment of Affordable Housing identified on a registered plan of strata Subdivision for the Land, that:

- (a) is a public positive covenant under section 88E of the Conveyancing Act 1919 (NSW), and which satisfies the requirements of section 88E;
- (b) specifies that the City is imposing the public positive covenant, has the benefit of the public positive covenant, and has the sole authority to modify, vary or release the public positive covenant; and
- (c) requires that, in respect of the dwelling of Affordable Housing within the allotment on which title the covenant is registered:
  - (i) the dwelling be maintained as Affordable Housing;
  - (ii) the dwelling be rented to very low, low and moderate income households at no more than 30 per cent of gross household income; and
  - (iii) all rent received in respect of the dwelling, after deduction of management and maintenance costs, be used solely for the purpose of improving, replacing, maintaining or providing additional affordable rental housing within the City of Sydney local government area,

and is otherwise in a form acceptable to the City.

Affordable Housing Floor Space means the floor space of Affordable Housing to be provided within the Development, that is calculated as the Contribution Value divided by the Agreed Market Value Rate, as adjusted in accordance with clause 3 of Schedule 3.

Affordable Housing Monetary Contribution means any Undischarged Affordable Housing Floor Space multiplied by the Attributed Market Value Rate, determined in accordance with clause 8.2(a) of Schedule 3.

Affordable Housing Requirements means the requirements for the Affordable Housing specified in clause 8 of Schedule 3.

Affordable Housing Units means those parts of the Public Benefit described as "Affordable Housing Units" in clause 1 of Schedule 3, being the construction of fully completed residential units by the Developer and the transfer of those units (including their car park spaces) to a Community Housing Provider in accordance with this document.

Amended Sydney LEP means the Sydney LEP amended consistent with the Planning Proposal pursuant to the process set out in Part 3, Division 4, of the Act.

Application means a Development Application or Subdivision Application.

Attributed Market Value Rate is the amount of money per square metre of Gross Floor Area, as determined and adjusted in accordance with clause 3 of Schedule 3.

Attributed Value of the Car Park Lots is the amount of money for each car park space, as determined and adjusted in accordance with clause 3 of Schedule 3.

Attributed Value of the Footpath Works means the value determined in accordance with clause 9.2 of Schedule 3.

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.

Benefit Allocation means the amount which represents 50% of the Planning Gain.

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.

Car Park Lots means the part of the Public Benefit described as "Car Park Lots" in clause 1 of Schedule 3, being the construction and designation of at least 4 parking spaces within the Development for the Affordable Housing Units (with parking for any adaptable unit beings accessible parking) and transfer of those finished parking spaces to a Community Housing Provider in accordance with this document.

City's Personal Information means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Developer).

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.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

Community Housing Provider means a community housing provider, as defined in the Community Housing Providers (Adoption of National Law) Act 2012, with a category of registration of Tier 1 or Tier 2 under the National Register of Community Housing Providers established by the Community Housing Providers National Law (NSW).

Completion means, in respect of:

- (a) the Footpath Works, that stage in the performance of the Footpath Works, when the Footpath Works have been carried out and completed in accordance with this document, except for minor omissions and minor defects:
  - (i) the existence of which do not prevent the Footpath Works being reasonably capable of being used for their intended purpose;
  - (ii) which the City determines that the Developer has reasonable grounds for not promptly rectifying; and
  - (iii) the rectification of which will not affect the immediate and convenient use of the Footpath Works for their intended purpose; and
- (b) the Carpark Lots, when the Car Park Lots have been completed in accordance with this document, except for minor omissions and minor defects:
  - (i) the existence of which do not prevent the Car Park Lots being reasonably capable of being used for their intended purpose; and
  - (ii) the rectification of which will not affect the immediate and convenient use of the Car Park Lots for their intended purpose;
- (c) in respect of the Affordable Housing Units, when:
  - (i) the Affordable housing Units have been completed in accordance with this document, except for minor omissions and minor defects:
    - (A) the existence of which do not prevent the Affordable Housing Units from being reasonably capable of being used for their intended purpose; and
    - (B) the rectification of which will not affect the immediate and convenient use of the Affordable Housing Units for their intended purpose; and

- (ii) all services are connected and operational in a manner suitable for occupation of the Affordable Housing.

Completion Notice means a notice issued by the Developer in accordance with clause 6.2.

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.

Contamination has the meaning given to that word in the Contaminated Land Management Act 1997 (NSW).

Contract for Sale means a contract for the sale by the Developer of all of the Affordable Housing Units and Car Park Lots to a single Community Housing Provider, including each of the Special Conditions set out in Annexure C to this document.

Contribution Value means an amount of money calculated in accordance with the following formula, as adjusted in accordance with clause 3 of Schedule 3 and the Worksheet at Annexure B:

$$(BA + (0.5 \times AFSV)) - (VFW + VCPL)$$

Where:

BA is the Benefit Allocation

AFSV is the Additional DA Floor Space Value

VFW is the Attributed Value of the Footpath Works

VCPL is the Attributed Value of the Car Park Lots

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.

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Public Benefits or any other matter which prevents the Public Benefits from complying with the terms of this document.

Defects Liability Period means the period of 12 months from the date on which the Footpath Works reach Completion.

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 (if the consent authority under the Act determines the Development Application by granting consent) under Part 4 of the Act and includes:

- (a) any conditions of consent to which that Development Consent is subject; and
- (b) all modifications of the Development Consent made under section 96 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 planning instrument has the same meaning given to that expression under the Act.

Footpath Land means the part of the Public Benefit described as "Footpath Land" in clause 1 of Schedule 3, being the land comprising finished footpath that is required to be dedicated to the City in accordance with this document.

Footpath Works means those parts of the Public Benefit described as "Footpath Works" 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 has the meaning given to the term "gross floor area" in the Sydney LEP 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 an irrevocable unconditional bank guarantee or documentary performance 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; and
- (j) be on such other terms approved by the City.

Guarantee Amount means the total amount listed in Item 6 of Schedule 1 of this document.

Guarantee Due Date means the date or milestone by which the Developer must provide the Guarantee 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.

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

Law means any applicable law, regulation, industry code or standard, including any applicable Environmental Law.

Liability means any liability or obligation (whether actual, contingent or prospective), including for any Loss, irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

Loss means all damage, loss, cost and expense of whatsoever nature or description.

Occupation Certificate has the same meaning as in the Act.

Personal Information has the meaning set out in the Privacy Act 1988 (Cth).

Personnel means the Developer's officers, employees, agents, contractors or subcontractors (of any tier).

Planning Gain means the "planning gain" (as defined in, and calculated in accordance with, the City's Guideline to Preparing Site Specific Planning Proposal Requests in the City of Sydney Employment Lands Investigation Areas) attributable to the Development as a result of the Sydney LEP being amended consistent with the Planning Proposal pursuant to the process set out in Part 3, Division 4, of the Act, as adjusted in accordance with clause 3 of Schedule 3.

Planning Proposal means a planning proposal (within the meaning of the Act), which seeks:

- (a) to rezone the Land from B7 Business Park to B4 Mixed Use (as defined in the Sydney LEP);
- (b) an increase to the maximum floor space ratio, under clause 4.4 of the Sydney LEP, for a building on the Land from 1.5:1 to 2:1;
- (c) an increase to the maximum height, under clause 4.3 of the Sydney LEP, of a building on the Land from 18m to 29m; and
- (d) to include a requirement in the Sydney LEP that 10% of the total floor area of buildings on the Land must be used for non-residential purposes.

Privacy Laws means the Privacy Act 1988 (Cth), the Privacy and Personal Information Protection Act 1998 (NSW), the Spam Act 2003 (Cth), the Do Not Call Register Act 2006 (Cth) and any other applicable legislation, principles, industry codes and 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.

Purchase Price means the amount of money calculated in accordance with clause 6.2 of Schedule 3.

Quantity Surveyor means a qualified independent and practising quantity surveyor with at least five years' experience in the assessment of building and construction costs.

Quantity Surveyor's Assessment means the assessment by the Quantity Surveyor of the cost to deliver the Footpath Works.

Regulation means the Environmental Planning and Assessment Regulation 2000 (NSW).

Request means the document titled "Planning Proposal–Planning Report–102-106 Dunning Avenue, Rosebery–Rezone land from B7 Business Park to B4 Mixed Use and amendment development standards" prepared on behalf of the Developer in accordance with the City's Guideline to Preparing Site Specific Planning Proposal Requests in the City of Sydney Employment Lands Investigation Areas, adopted by Council on 26 October 2015.

Special Conditions means the special conditions to the Contract for Sale specified in Annexure C.

Standards means the policies, procedures and standards applicable for the carrying out of the Footpath Works, including those listed at clause 11 of Schedule 3.

Subdivision in respect of land, has the same meaning as "subdivision of land" in the Act.

Subdivision Application means a development application under Part 4 of the Act (being the Development Application or other development application) for the strata Subdivision of the Land, submitted to a consent authority under the Act.

Suitably Qualified Valuer means a valuer who:

- (a) is a registered valuer under the Valuers Act 2003 (NSW) and is not restricted under that Act from valuing strata title residential land;
- (b) is both an Associate (or a Fellow) Member and a Certified Practising Valuer of the Australian Property Institute (Inc) NSW Division;
- (c) is then practising as a valuer;
- (d) is independent and not related to any party to this document;
- (e) has at least 5 years experience in valuations; and
- (f) has a practical understanding of the development and planning process to prepare a valuation for the market value rate of residential strata floor space.

Sydney LEP means the Sydney Local Environmental Plan 2012.

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.

Transfer Land means the land that is to be transferred or dedicated in accordance with Schedule 3 of this document, comprising:

- (a) the Footpath Land;
- (b) the Affordable Housing Units; and
- (c) Car Park Lots.

Unamended Sydney LEP means the Sydney LEP as in force as at the date of this document and prior to any amendment consistent with the Planning Proposal.

Undischarged Affordable Housing Floor Space means any difference between the Affordable Housing Floor Space and the aggregate floor space of the Affordable Housing Units subject to the Contract for Sale.

Worksheet means the template at Annexure B, setting out a worked example of how the Total Benefit Allocation, the Contribution Value and the Affordable Housing Floor Space is calculated under this document.

## 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) A reference to the date of this document is to the date that this document commenced in accordance with clause 3 of this document.
- (j) Words defined in the GST Act have the same meaning in clauses about GST.
- (k) 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 93F of the Act and applies to:

- (a) the Land;
- (b) the Development; and
- (c) the Sydney LEP.

### 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 94, 94A and 94EF of the Act

- (a) The application of sections 94, 94A and 94EF of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.
- (b) For the avoidance of doubt, if the City imposes a condition of consent on a Development Consent for the Development under section 94 of the Act requiring payment of a contribution authorised by a contributions plan approved under section 61 of the City of Sydney Act 1988 (NSW), no further contributions pursuant to section 94 or section 94A of the Act are payable in relation to the Development.

### 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 25E of the Regulation must not be used to assist in construing this document.

## 3. OPERATION OF THIS PLANNING AGREEMENT

### 3.1 Commencement

- (a) Clauses 5 to 10, clause 12, Schedule 3 and Annexure A to this document commence on the date that the Sydney LEP is amended in accordance with the Planning Proposal.
- (b) The remaining provisions of 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 in accordance with this document.

### 6. COMPLETION OF FOOTPATH WORKS

#### 6.1 Date of Completion

The Developer must ensure that the Footpath Works reach Completion on or before the date or other milestone referred to in Column 3 in the table in clause 1 of Schedule 3 of this document in respect of the Footpath Works.

#### 6.2 Developer completion notice

When, in the reasonable opinion of the Developer, the Footpath Works have reached Completion, the Developer must notify the City's Representative in writing and must include in that notice:

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion that the Footpath Works have reached Completion;



- (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to assume responsibility for the Footpath Works; and
- (c) at least three sets of the “as built” drawings of the Footpath Works, including one set in electronic format,

### 6.3 Inspection by the City

- (a) The City’s Representative must inspect the Footpath Works within 5 Business Days of the date that the Completion Notice is received by the City in respect of the Footpath Works. The City’s Representative may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 6.2. Within 10 Business Days of the date of the inspection by the City’s Representative, the City must by written notice to the Developer:
  - (i) state that Completion has been achieved;
  - (ii) state that Completion has not been achieved and, if so, identify the Defects, errors or omissions which, in the opinion of the City’s Representative, prevent Completion; or
  - (iii) issue a notice under clause 8.1.
- (b) Nothing in this clause 6.3, or any notice issued under this clause 6.3, will:
  - (i) reduce or waive in any manner the Developer’s responsibility to:
    - (A) deliver the Footpath Works in accordance with this document; or
    - (B) the Developer’s responsibility to correct Defects, errors or omissions, whether or not these are identified by the City; or
  - (ii) create any liability for the City in relation to any defective aspect of the Footpath Works.

## 7. COMPLETION OF AFFORDABLE HOUSING UNITS AND CAR PARK LOTS

### 7.1 Date of Completion

The Developer must ensure that the Affordable Housing Units and Car Park Lots reach Completion on or before the date or other milestone referred to in Column 3 in the table in clause 10 of Schedule 3 of this document in respect of the Affordable Housing Units and Car Park Lots.

### 7.2 Developer completion notice

When, in the reasonable opinion of the Developer, the Affordable Housing Units and the Car Park Lots have reached Completion, the Developer must notify the City’s Representative in writing and must include in that notice:

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion the Affordable Housing Units and Car Park Lots have reached Completion;
- (b) a statement from the Community Housing Provider that has entered into a Contract of Sale with the Developer for the Affordable Housing Units and Car Park Lots that it is satisfied that the Affordable Housing Units and Car Park Lots have reached Completion.

### 7.3 Inspection by the City

- (a) The City may give a notice to the Developer, within 5 Business Days after it receives the notice from the Developer under clause 7.2, that it wishes to inspect the Affordable Housing Units and the Car Park Lots.
- (b) If the City gives a notice to the Developer under clause 7.3(a), the Developer must promptly give the City access to the Affordable Housing Units and the Car Park Lots to inspect them and Council must inspect within 5 Business Days.

## 8. NON-COMPLETION OF PUBLIC BENEFITS

### 8.1 Request not to complete

- (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 the City considers necessary to:
    - (A) complete the portion of Public Benefit not being delivered by the Developer; or
    - (B) to provide public benefits elsewhere in the locality to the value of that portion of the Public Benefit not being delivered by the Developer.

### 8.2 Failure to complete Footpath Works

- (a) If the Developer fails to complete the Footpath Works in the form and to the standards required under the Development Consent or this document then the City may either:
  - (i) complete the Footpath Works itself, including by exercising its right to compulsorily acquire the Footpath Land in accordance with clause 12.7 of this document; or

- (ii) modify the Footpath Works 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 12 will apply. To the extent that the City's costs exceed the amount of the Guarantee, the City can recover this amount from the Developer as a debt due and owing to the City.

- (b) If the City exercises its rights under this clause 8 to complete the Footpath Works, the Developer grants 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 Footpath Works.

## 9. INDEMNITY

The Developer must indemnify and keep indemnified the City against any:

- (a) loss or damage;
- (b) cost or expense;
- (c) claim or proceedings;
- (d) order or regulatory action; and
- (e) 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 or the failure to perform the Developer's obligations under this document. The liability of the Developer to indemnify the City shall be reduced to the extent that the Developer demonstrates that the circumstances from which the loss, damage, cost, expense, claim, proceedings, order, regulatory action or liability arose were attributable to a wilful or negligent act or omission of the City (or any person engaged by the City other than the Developer or Personnel).

## 10. DEFECTS LIABILITY

### 10.1 Security for Defects Liability Period

Until the expiry of the Defects Liability Period, the City may retain from the Guarantee an amount equal to 10% of the Attributed Value of the Footpath Works as security for the Developer's performance of its obligations under this clause 10. The Developer must make any necessary arrangements to allow the provision of the Guarantee for the Defects Liability Period in accordance with this clause.

### 10.2 Defect in the Footpath Works

- (a) If:
  - (i) the Developer is in breach of clause 4.2 of this document; or

- (ii) the City notifies the Developer of a Defect in the Footpath Works within the Defects Liability Period,

then, following written notice from the City, the Developer must promptly correct or replace (at the Developer's expense) the defective elements of the Footpath Works.

- (b) If the Developer is unable or unwilling to comply with clause 10.2(a), or fails to rectify the Defect within three months of receiving notice from the City under clause 10.2(a), the City may:
  - (i) rectify the Defect itself;
  - (ii) make a claim on the Guarantee in accordance with clause 12 for the reasonable costs of the City in rectifying the Defect; and
  - (iii) to the extent the costs incurred to rectify the Defect exceeds the Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the City.
- (c) If the City requires access to the Land to rectify any Defect, the Developer grants the City and its contractors a licence for such period as is necessary for the City and its contractors to access the Land to carry out, or procure the carrying out, of the rectification works.

## 11. REGISTRATION AND CAVEAT

### 11.1 Registration of this document

- (a) The Developer:
  - (i) consents to the registration of this document at the Land and Property Information on the title to the Land;
  - (ii) warrants that it has obtained all consents to the registration of this document on the 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 title to the Land, including:
    - (A) producing any documents or letters of consent required by the Registrar-General of the Land and Property Information;
    - (B) providing the production slip number when the Developer produces the certificate of title to the Land at the Land and Property Information; and
    - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at the Land and Property Information.

- (iv) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the Land and Property Information that relate to registration of this document.

## 11.2 Caveat

- (a) The City may, at any time after the date of this document, register a caveat over the Land preventing any dealing with the Land that is inconsistent with this document. Provided that the City complies with this clause 11.2, the Developer must not object to the registration of this caveat and may not attempt to have the caveat removed from the title to the Land.
- (b) In exercising its rights under this clause 11.2 the City must do all things reasonably required to:
  - (i) remove the caveat from the Land once this document has been registered on the title to the Land; and
  - (ii) consent to the registration of:
    - (A) this document; and
    - (B) any plan of consolidation, plan of Subdivision or other dealing required by this document or the Development Consent.

## 11.3 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 title to the Land.
- (b) If the Developer registers a plan of strata Subdivision in respect of the Land, in accordance with the requirements of this document, the City must promptly do all things reasonably required to remove this document from the title to allotments within the strata plan that are not:
  - (i) the common property of the strata plan; or
  - (ii) allotments required under this document to be developed as:
    - (A) Affordable Housing Units; or
    - (B) Car Park Lots.

## 12. ENFORCEMENT

### 12.1 Developer to provide Guarantee

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

## 12.2 Adjustment of Guarantee Amount

- (a) On each anniversary of the date of the Guarantee (the "Adjustment Date"), the Guarantee Amount is to be adjusted to a revised amount by applying the following formula:

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

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

- (b) If after the formula is applied under clause 12.2(a) the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.
- (c) If after the formula is applied clause 12.2(a) the revised Guarantee Amount will be greater than the amount held at the preceding Adjustment Date, the Developer must within 10 Business Days of the Adjustment Date deliver to the City's Representative a replacement Guarantee to replace the Guarantee then held by the City, in the amount calculated under this clause 12.2.
- (d) Any unused portion of the Guarantee that is held by the City immediately prior to the receipt by the City's Representative of the replacement Guarantee under clause 12.2(c), must be returned to the Developer upon receipt of the replacement Guarantee.

## 12.3 Right of City to claim on Guarantee

- (a) The Developer agrees that the City may itself or through the City's Representative make an appropriation from the Guarantee (and the proceeds of the Guarantee, including any interest earned in respect of such proceeds) at any time, without notice to the Developer, in such amount as the City, acting reasonably, thinks appropriate if:
- (i) the Developer fails to comply with clause 9.2 of Schedule 3 of this document (provision of detailed design drawings and detailed costs estimate);

- (ii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 8.1(a)(ii);
  - (iii) an Insolvency Event occurs in respect of the Developer;
  - (iv) the Developer fails to deliver the Footpath Works in accordance with clauses 6.1 or 8.2;
  - (v) the Developer fails to rectify a Defect in accordance with clause 10.2 of this document;
  - (vi) the detailed designs for the Footpath Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;
  - (vii) the Footpath Works do not reach Completion within 36 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed by the City in writing); or
  - (viii) the City incurs or reasonably expects to incur 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 12.2 must be applied only towards any or all of:
- (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document;
  - (ii) carrying out any works required to complete the Footpath Works;
  - (iii) the provision of public benefits elsewhere within the locality to the value of the Contribution Value, in the following circumstances:
    - (A) by agreement between the parties under clause 8.1(a)(ii); or
    - (B) insolvency of the Developer; and
  - (iv) ensuring due and proper performance of the obligations of the Developer under this document.
- (c) The Developer is not entitled to, and must not seek, an injunction against either the City or the issuer of the Guarantee (if applicable) preventing a demand or payment under the Guarantee (whether the demand extends to the whole of the Guarantee or part thereof) or the use to which the proceeds of such a demand can be put.

#### 12.4 Expenditure by the City to Complete Footpath Works

If the City claims on the Guarantee to Complete the Footpath 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 Footpath 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 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.

#### 12.5 Top-up and return of Guarantee

- (a) If the City calls upon the Guarantee in accordance with this clause 12 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:

- (i) the monies secured by the Guarantee have not been expended;
- (ii) the City has concurred with Completion in accordance with clause 6.3(a)(i) of this document, taking into account any approved non-completion of Public Benefits approved by clause 8.1 of this document; and
- (iii) the City has been provided with the security for the Defects Liability Period in accordance with clause 10.1,

then the City will promptly return the Guarantee to the Developer following the issue of a notice pursuant to clause 6.3(a)(i) of this document.

- (c) If, following expiry of the Defects Liability Period, the City is satisfied that all defects have been rectified in accordance with clause 10 then the City must promptly return to the Developer the portion of the Guarantee retained by the City as security for the Defects Liability Periods.

#### 12.6 Trusts and interest

If Council has called up the Guarantee and holds surplus funds after the Developer's default has been remedied, Council:

- (a) may hold that surplus as a security deposit until the Developer replaces the Guarantee for the full Guarantee Amount; and
- (b) must provide the surplus to the Developer promptly after it receives the replacement Guarantee

#### 12.7 Compulsory acquisition

If the Developer fails to transfer or dedicate the whole or any part of the Transfer Land as required by clause 7 of Schedule 3 by the date that is seven weeks following the due date for the applicable part of the Transfer Land specified in



clause 1 of Schedule 3, then the City may compulsorily acquire that land 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 12.7 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 12.7 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) the Developer must pay the City, promptly on demand, an amount equivalent to all costs incurred by the City in acquiring the whole or any part of the Transfer Land as contemplated by this clause 12.7.

### 13. DISPUTE RESOLUTION

#### 13.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 13.

#### 13.2 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 13; 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.

### 13.3 Not use information

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 13 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 13 for any purpose other than in an attempt to settle the Dispute.

### 13.4 Condition precedent to litigation

Subject to clause 13.5, 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.

### 13.5 Summary or urgent relief

Nothing in this clause 13 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

## 14. TAXES AND GST

### 14.1 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 14.1(a).

### 14.2 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.

### 14.3 Supply subject to GST

To the extent that clause 14.2 does not apply to a supply made under this document, this clause 14.3 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 14.3(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 14.3(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 14.3.
- (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.

## 15. DEALINGS

### 15.1 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.

### 15.2 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 11, 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 to the Dealing on substantially the same terms as the draft deed included as Annexure D to this document.
- (b) On and from registration of this document in accordance with clause 11:
- (i) the Developer may Deal with this document or the Land 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;
  - (iii) the Developer may enter into contracts for the sale of proposed strata lots; and
  - (iv) the Developer must not otherwise Deal with this document or the Land without:
    - (A) the prior written consent of the City (which will not be unreasonably withheld in the case of a mortgage in favour of a reputable mortgagee which acknowledges, in a form reasonably acceptable to the City, the City's interest in the Land under this document); and
    - (B) other than where the Dealing is a mortgage, 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.
- (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 15.2.

### 15.3 Extinguishment or creation of interests on Transfer Land

- (a) Prior to the dedication or transfer of the Transfer Land in accordance with clause 7 of Schedule 3, the Developer must:
  - (i) extinguish all leases and licences over the Transfer Land; and
  - (ii) use its best endeavours to extinguish all redundant encumbrances and those that, in the City's opinion, would unreasonably impede the intended use of all or any part of the Transfer Land.
- (b) The Developer must comply with any directions by the City relating to the Transfer Land, including the creation of any encumbrances over the Transfer Land.

## 16. TERMINATION

- (a) Either party may terminate this document by notice in writing to the other party if:
  - (i) the Development Consent lapses or is surrendered by the Developer; or

- (ii) the Amended Sydney LEP is declared to be invalid by a Court of competent jurisdiction.
- (b) If this document is terminated 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 parties must take all steps reasonably necessary to minimise any loss that 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 costs incurred by the City by operation of this document. If in exercising its rights under this document the City 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; and
  - (iv) the City will, at the Developer's cost, do all things reasonably required to remove this document from the title to the Land.

## 17. CONFIDENTIALITY AND DISCLOSURES

### 17.1 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 17.2 or 17.3.

### 17.2 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 17.2(a) keeps the Confidential Information

confidential and does not use it for any purpose other than as permitted under clause 17.2(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 17.2(b)(i).

### 17.3 Disclosures required by Law

- (a) Subject to clause 17.3(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 17.3(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.

### 17.4 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.

### 17.5 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.

#### 17.6 Media releases

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

### 18. 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 fax.
- (b) A notice is taken to be received:
  - (i) If left at the addressee's address between 9am and 5pm on a Business Day it is taken to be received at the time and date it is left, otherwise it is taken to be received on the next Business Day;
  - (ii) If it is sent by mail, it is taken to have been received 5 Business Days after it is posted.
  - (iii) If it is sent by fax on a Business Day, it is taken to have been received on the date that the sending party's fax machine records that the fax has been successfully transmitted but if the transmittal is recorded by the sending party's fax machine as after 5pm New South Wales time or a day that is not a Business Day, it is taken to be received on the next Business Day.
- (c) A person's address and fax number 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.

### 19. GENERAL

#### 19.1 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.

#### 19.2 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.

#### 19.3 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.

#### 19.4 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.

#### 19.5 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 or, without limiting any discretion, provide any consent), that the other party may reasonably require to give full effect to this document.

#### 19.6 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.



#### 19.7 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.

#### 19.8 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.

#### 19.9 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.

#### 19.10 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.

#### 19.11 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.

#### 19.12 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.

#### 19.13 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.

#### 19.14 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.

#### 19.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	102-106 Dunning Avenue, Rosebery (Lot 50 in Deposited Plan 1171307)
2.	Development	Development on or of the Land within the meaning of the Act, comprising a mix of residential and commercial development, which would breach the zoning, height or floor space ratio controls in the Unamended Sydney LEP.
3.	City's Representative	Name: The Director – City Planning, Development and Transport  Address: 456 Kent Street, Sydney NSW 2000  Fax number: 9265 9518
4.	Developer's Representative	Name: Mark Davidson  Address: Miller Street Partners, Suite 22 / 9 Middlemiss Street, Lavender Bay NSW 2060  Fax number: 9922 1478
5.	Development Application	Any development application lodged by the Owner in respect of the Development of the Land, which may in addition seek development consent under Part 4 of the Act for the strata Subdivision of the Land.
6.	Guarantee Amount	An amount equal to the Attributed Value of the Footpath Works as adjusted in accordance with clause 12.2.
7.	Guarantee Due Date	Prior to the issue of any Construction Certificate for the Development.

## 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 93F(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) Yes</p> <p>(c) No</p>
2.	Description of land to which this document applies (section 93F(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 93F(3)(b) of the Act)	<p>The development to which this document applies is the Development.</p> <p>The changes to the Sydney LEP to which this document applies are as set out in the Planning Proposal.</p> <p>(Refer to clause 2.1)</p>
4.	The scope, timing and manner of delivery of Public Benefits required by this document (section 93F(3)(c) of the Act)	Schedule 3 and Annexure A to this document.
5.	Applicability of sections 94 and 94A of the Act (section 93F(3)(d) of the Act)	The application of sections 94 and 94A of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections 94 or 94A will be required to be paid.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
6.	Applicability of section 94EF of the Act (section 93F(3)(d) of the Act)	The application of section 94EF of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 94EF will be required to be paid.
7.	Consideration of benefits under this document if section 94 applies (section 93F(3)(e) of the Act)	The Public Benefits are not to be taken into consideration in determining a development contribution under section 94 of the Act.
8.	Mechanism for Dispute Resolution (section 93F(3)(f) of the Act)	Clause 13
9.	Enforcement of this document (section 93F(3)(g) of the Act)	Clause 12
10.	No obligation to grant consent or exercise functions (section 93F(9) of the Act)	Clause 2.4
11.	Registration of this document (section 93H of the Act)	Clause 11
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to the explanatory note
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to the explanatory note
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to the explanatory note

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
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 each Public Benefit identified in Column 1 of the table below, by the due date corresponding to that Public Benefit in Column 3 of the table below, in accordance with this Schedule 3 and this document and any additional specifications identified for that Public Benefit in Column 4 of the table below.

	Column 1	Column 2	Column 3	Column 4
	Public Benefit	Attributed Value	Due date	Additional specifications
A.	Footpath Land	\$200.00	After Completion but before the issue of the first Occupation Certificate for the Development.	An area of approximately 50m <sup>2</sup> of land within the Land on which a footpath is required to be constructed as part of the Footpath Works.  Plans showing the indicative location of the Footpath Land are contained in Annexure A to this document.
B.	Affordable Housing Units	Attributed Market Value Rate X combined floor space of Affordable Housing Units	No later than 14 days after the earlier of the date of issue of the first Occupation Certificate for the Development and the date of registration of the plan of strata Subdivision for the Land	The Affordable Housing Units to be provided in accordance with clause 8 of Schedule 3.
C.	Car Park Lots	Attributed Value of the Car Park Lots	No later than 14 days after the earlier of the date of issue of the first Occupation Certificate for the Development and	The car parking lots (including accessible parking space(s) for any adaptable unit(s)) required to be provided in conjunction with the

	Column 1	Column 2	Column 3	Column 4
	Public Benefit	Attributed Value	Due date	Additional specifications
			the date of registration of the plan of strata Subdivision for the Land	Affordable Housing Units
D.	Footpath Works	Attributed value of the Footpath Works, determined in accordance with clause 9.2 of Schedule 3	Before the issue of the first Occupation Certificate for the Development.	The Footpath Works comprise the work to be carried out by the Developer to deliver 50m <sup>2</sup> of footpath within the Land. The Footpath Works must be carried out in accordance with this document, including this Schedule 3, and the plans and specifications showing the nature and extent of the required Footpath Works in Annexure A to this document.
E.	Affordable Housing Monetary Contribution	Undischarged Affordable Housing Floor Space x Attributed Market Value Rate, determined in accordance with clause 8.2(a) of this Schedule 3.	Before the issue of the first Occupation Certificate for the Development.	The Affordable Housing Monetary Contribution is only payable if the Affordable Housing Floor Space cannot be accommodated within whole Affordable Housing Units.

## 2. VALUE OF PUBLIC BENEFITS

- 2.1 The parties agree that the total value of the Public Benefits to be provided under this document must be equivalent to the sum of the Contribution Value plus the Attributed Value of the Footpath Works and the Attributed Value of the Car Park Lots at the date of the first Construction Certificate for the Development Consent.



3. CALCULATION OF THE PUBLIC BENEFITS
- 3.1 The Contribution Value, the Planning Gain (and the Benefit Allocation), the Attributed Market Value Rate, the Affordable Housing Floor Space, and the Attributed Value of the Car Park Lots (together, the Values) will each be determined in accordance with this clause 3.
- 3.2 At least 60 days prior to the lodgement of the Development Application with a consent authority under the Act, the Developer must submit to the City's Representative for approval, prepared by a Suitably Qualified Valuer:
- (a) a valuation report which complies with Annexure B and identifies the Valuer's opinion as to the Values; and
  - (b) an updated Worksheet (in accordance with the template provided at Annexure B).
- 3.3 At least 60 days prior to making an application for the first Construction Certificate with the relevant consent authority or certifier under the Act, the Developer must submit to the City's Representative for approval, prepared by a Suitably Qualified Valuer, an updated:
- (a) valuation report which complies with Annexure B and identifies the Valuer's opinion as to the Values; and
  - (b) Worksheet (in accordance with the template provided at Annexure B).
- 3.4 Within 30 Business Days after the City's Representative has received the valuation report and Worksheet in accordance with either clause 3.2 or 3.3, the City will inform the Developer in writing as to whether the valuation report and Worksheet are approved. If the valuation report and Worksheet are not approved, the City will inform the Developer what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the valuation report and Worksheet, following which the process outlined in this paragraph 3.4 will apply again.
- 3.5 The Developer agrees that the City may require:
- (a) substantiation of the value attributed by the Suitably Qualified Valuer to any one or more of the Values;
  - (b) the Valuer to adopt different valuation methodologies;
  - (c) the Valuer justify, correct or change assumptions made; or
  - (d) instead of (a) – (c) above, that the valuation report be peer reviewed by another Suitably Qualified Valuer.
- 3.6 Despite any other provision in this Schedule 3, each of the Values will be the higher of:
- (a) the relevant Value determined in accordance with clauses 3.2, 3.4 and 3.5; and

- (b) the relevant Value determined in accordance with clauses 3.3, 3.4 and 3.5.

#### 4. APPLICATIONS

##### 4.1 Development Application

- (a) At the time of making a Development Application with the consent authority under the Act, the Developer must submit with the Development Application:
  - (i) the valuation report and Worksheet approved in accordance with clause 33.2; and
  - (ii) a letter from the Community Housing Provider who is, or is proposed to be the party to the Contract for Sale, confirming that it has been consulted with respect to the design and location of the Affordable Housing Units and that the Community Housing Provider supports the lodgement of the Development Application.
- (b) The plans submitted with the Development Application must clearly identify the Affordable Housing Units and Car Park Lots that are to be subject to the Contract for Sale.

##### 4.2 Information required at time of Construction Certificate Application

- (a) At the time of making an application for the first Construction Certificate with the consent authority or certifier under the Act, the Developer must submit with the application for the first Construction Certificate an updated valuation report and Worksheet prepared in accordance with clause 3.

Note: it is expected that this also be a condition of the Development Consent

#### 5. AFFORDABLE HOUSING COVENANT

On or following the strata Subdivision of the Land, and prior to the issue of the first Occupation Certificate for the Development, the Developer:

- (a) consents to the registration of an Affordable Housing Covenant at the Land and Property Information on the title to each of the allotments of Affordable Housing identified on the registered plan of strata Subdivision for the Land;
- (b) warrants that it has obtained all consents to the registration of the Affordable Housing Covenant on the title to each of the allotments of Affordable Housing identified on the registered plan of strata Subdivision for the Land; and
- (c) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register the Affordable Housing Covenant on the title to each of the allotments of Affordable Housing identified on the registered plan of strata Subdivision for the Land, including:
  - (i) producing any documents or letters of consent required by the Registrar-General of the Land and Property Information;

- (ii) providing the production slip number when the Developer produces the certificate of title to the applicable allotment at the Land and Property Information; and
- (iii) providing the City with a cheque for registration fees payable in relation to registration of the Affordable Housing Covenant at the Land and Property Information; and
- (d) must act promptly in complying with and assisting to respond to any requisitions raised by the Land and Property Information that relate to registration of the Affordable Housing Covenant.

## 6. CONTRACT FOR SALE

### 6.1 Contract for sale requirement

- (a) Prior to the issue of the first Construction Certificate for the Development, the Developer must execute a Contract for Sale with a Community Housing Provider and provide a copy of that executed Contract for Sale to the City's Representative.

Note: it is expected that this also be a condition of the Development Consent

- (b) The Contract for Sale must:
  - (i) provide for the transfer of the Affordable Housing Units and Car park Lots identified in the plans approved by the Development Consent;
  - (ii) include each of the Special Conditions identified in Annexure C;
  - (iii) require that the Affordable Housing comply with the Affordable Housing Requirements;
  - (iv) provide for the completion of the sale of the Affordable Housing Units and Car Park Lots to occur no later than 14 days after the earlier of the date of issue of the first Occupation Certificate for the Development and the date of registration of the plan of strata Subdivision for the Land;
  - (v) provide that the sale of the Affordable Housing Units will not occur until the Affordable Housing Covenant is registered on the title to each allotment of Affordable Housing;
  - (vi) in respect of each dwelling of Affordable Housing, specify:
    - (A) the size of each dwelling; and
    - (B) the internal fitout requirements and specifications,
 as agreed between the Developer and the Community Housing Provider;

(vii) provide that the total consideration payable by the Community Housing Provider for the Affordable Housing Units and Car Park Lots does not exceed the Purchase Price; and

(viii) otherwise be on terms reasonably acceptable to the City.

## 6.2 Calculation of Purchase Price

(a) The Purchase Price is:

(i) if no Additional Affordable Housing Floor Space is provided in the Development - \$1.00; or

(ii) if Additional Affordable Housing Floor Space is provided in the Development – an amount of money calculated in accordance with the following formula:

$$(AAHFS \times AMVR) + (IR \times BA)$$

where:

**AAHFS** means Additional Affordable Housing Floor Space in square metres

NOTE: Additional Affordable Housing Floor Space is defined in clause 1.1 of this document to mean any floor space of Affordable Housing provided within the Development in addition to the Affordable Housing Floor Space.

**AMVR** means Attributed Market Value Rate

NOTE: Attributed Market Value Rate is defined in clause 1.1 of this document to mean the amount of money per square metre of Gross Floor Area, as determined and adjusted in accordance with clause 3 of Schedule 3.

**BA** means the amount which represents 50% of the Planning Gain

NOTE: Planning Gain is defined in clause 1.1 of this document to mean the "planning gain" (as defined in, and calculated in accordance with, the City's Guideline to Preparing Site Specific Planning Proposal Requests in the City of Sydney Employment Lands Investigation Areas) attributable to the Development as a result of the Sydney LEP being amended consistent with the Planning Proposal pursuant to the process set out in Part 3, Division 4, of the Act, as adjusted in accordance with clause 3 of Schedule 3.

**IR** means, in respect of the Development, the incentive rate specified in the following table that corresponds to the Additional Affordable Housing Floor Space applicable to the Development:

Incentive Affordable Housing Floor Space	Incentive rate
--	----------------

<50m <sup>2</sup>	0%
50 - 150 m <sup>2</sup>	2.5%
151 - 250 m <sup>2</sup>	5%
251 - 350 m <sup>2</sup>	7.5%
351 - 450 m <sup>2</sup>	10%
>451 m <sup>2</sup>	12.5%

Note: it is expected that this also be a condition of the Development Consent

Example:

Where:

AAHFS = 450m<sup>2</sup> (example figure only)

AMVR = \$14,000 (example figure only)

PG = \$15,855,173.28

BA = (\$15,855,173.28/2)

= \$7,927,586.64

IR = 10% (based on AAHFS)

The Purchase Price is:

(AAHFS x AMVR) + (IR x BA)

(450 x \$14,000) + (0.10 x \$7,927,586.24) =

\$6,300,000 + \$792,758.62 =

\$7,092,758.62

### 6.3 The City to review Contract for Sale

- (a) Prior to executing a Contract for Sale, the Developer must submit a copy of the proposed Contract for Sale to the City's Representative for the City's written consent.
- (b) The Developer must not execute a proposed Contract for Sale unless the City has consented in writing to the execution of the proposed Contract for Sale in accordance with this clause 6.3 of Schedule 3.
- (c) Where a proposed Contract for Sale is submitted to the City's Representative under clause 6.3(a) of Schedule 3, the City must consent or refuse to grant consent to the execution of the proposed Contract for Sale within 10 Business Days after the City's Representative receives the proposed Contract for Sale under clause 6.3(a) of Schedule 3, provided that in counting time for the purpose of that time period, the following days will be excluded:
  - (i) the day on which the City's Representative makes a request:
    - (A) for further relevant information; or

- (B) for a consultation meeting with the Developer or the Community Housing Provider,

in order for the City to consider the proposed Contract for Sale;

- (ii) the day on which:

- (A) the further requested information is provided in full and complete form; and

- (B) the requested consultation meeting takes place; and

- (iii) each day in between those two days,

and such days shall not count towards the expiry of that time period.

- (d) The City may only refuse to grant consent to the execution of the proposed Contract for Sale if, in the reasonable opinion of the City, the proposed Contract for Sale does not satisfy the requirements of clause 6.1 of Schedule 3, or does not otherwise comply with the requirements of this document, including the Affordable Housing Requirements.
- (e) If the City refuses consent to execute a proposed Contract for Sale under this clause, it must promptly within the time period specified in clause 6.3(c) of Schedule 3 notify the Developer of its reasons.
- (f) Upon receipt by the Developer of any notice referred to in clause 6.3(e) of Schedule 3, the Developer may amend the proposed Contract for Sale taking the City's reasons into account, and re-submit the amended proposed Contract for Sale to the City's Representative for consent pursuant to clause 6.3(a) of Schedule 3.
- (g) The Developer must not execute any Contract for Sale that has been amended in any material way after the City has consented to it under clause 6.3(c) of Schedule 3, but may re-submit the amended proposed Contract for Sale to the City's Representative for consent pursuant to clause 6.3(a) of Schedule 3.

#### 6.4 Termination of the Contract of Sale

If, for any reason, the Contract of Sale entered into by the Developer under clause 6.1(a) is terminated, the Developer must notify the City within 5 Business Days of the Contract of Sale being terminated and must enter into a new Contract of Sale on the same terms with another Community Housing Provider within a further 2 months. If the Developer has not entered into a Contract for Sale with another Community Housing Provider within a further 2 months, the Developer must enter into a Contract for Sale on the same terms with the City.

### 7. TRANSFER LAND

#### 7.1 Dedication of land – decision

- (a) The Developer must, at its cost, take all steps required to:

- (i) transfer or dedicate the Footpath Land to the City;
- (ii) transfer the Affordable Housing Units and Car Park Lots to a Community Housing Provider pursuant to a Contract for Sale;

by the applicable due date for that part of the Transfer Land specified in clause 1 of Schedule 3. As part of this obligation, the Developer must confirm with the City whether the Footpath Land is to be:

- (iii) dedicated to the City on registration of a plan of subdivision; or
- (iv) transferred to the City on registration of a transfer instrument.

## 7.2 Obligations on dedication

The requirement for the Developer to dedicate the Footpath Land to the City is satisfied where a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the Roads Act 1993 (NSW) or creates a public reserve or drainage reserve under the Local Government Act 1993 (NSW).

## 7.3 Obligations on transfer

- (a) The requirement for the Developer to transfer the Affordable Housing Units and Car Park Lots to a Community Housing Provider is satisfied where evidence is provided by the Developer to the reasonable satisfaction of the City that the Community Housing Provider is the registered proprietor of the Affordable Housing Units and Car Park Lots.
- (b) The Developer must ensure that the Transfer Land is, at the date that the Transfer Land is transferred to a Community Housing Provider or dedicated to the City, free of all encumbrances and affectations (whether registered or unregistered and including any charge or liability for rates, taxes and charges) except for any encumbrances required by this document or agreed in writing by the City, acting reasonably.
- (c) The Developer must indemnify and agree to keep indemnified the City against any loss, damage, cost, expense, claim, proceedings, orders or requirements or liabilities suffered or incurred by the City in respect of or in connection with any Contamination in, over, under or migrating from the whole or any part of the Transfer Land but, in respect of the Footpath Land, only in relation to Contamination that existed on or before the date that the Footpath Land is dedicated to the City in accordance with the requirements of this clause.
- (d) The Developer warrants that as at the date of this document the Transfer Land is not subject to any Adverse Affectation and warrants as to those matters in Schedule 3 of the Conveyancing (Sale of Land) Regulation 2010 (NSW), unless otherwise notified to and agreed by the City in writing in its absolute discretion.

8. AFFORDABLE HOUSING REQUIREMENTS
- 8.1 Subject to clause 8.2, the Affordable Housing Units must have an aggregate floor space greater than or equal to the sum of the Affordable Housing Floor Space.
- 8.2 Where the Affordable Housing Floor Space cannot be accommodated within whole Affordable Housing Units, the Developer may elect to either:
- (a) pay the balance of the Contribution Value as an Affordable Housing Monetary Contribution in accordance with item E at the table in clause 1 of Schedule 3; or
  - (b) provide an additional unit for Affordable Housing.
- 8.3 Unless otherwise agreed in writing between the Developer and the Community Housing Provider who has executed the Contract for Sale, the Developer must ensure that the Affordable Housing on the Land satisfies the following requirements:
- (a) between 30% to 50% of the total floor space of the Affordable Housing must comprise one-bedroom dwellings;
  - (b) between 30% to 50% of the total floor space of the Affordable Housing must comprise two-bedroom dwellings;
  - (c) between 10% to 30% of the total floor space of the Affordable Housing must comprise three-bedroom dwellings;
  - (d) each dwelling of Affordable Housing must be designed and constructed to a standard which, in the opinion of the City:
    - (i) is of a quality and standard of design that is consistent with other dwellings in the Development; and
    - (ii) ensures that the dwelling cannot be outwardly differentiated from the other dwellings within the Development;
  - (e) living rooms and private open spaces in at least 70% of the Affordable Housing dwellings must receive a minimum of 2 hours direct sunlight between 9 am and 3 pm each day;
  - (f) at least 85% of the Affordable Housing dwellings must receive some direct sunlight between 9 am and 3 pm at mid-winter;
  - (g) at least 60% of Affordable Housing dwellings must be naturally cross ventilated;
  - (h) at least 15% of Affordable Housing dwellings must be adaptable.



## 9. FINAL DESIGN OF THE FOOTPATH WORKS

### 9.1 Scope of Footpath Works

As at the date of this document, the nature and extent of the Footpath Works is set out in Annexure A to this document. The parties agree that further design refinement of the Footpath Works may be necessary, having regard to:

- (a) the extent to which the design of the Footpath Works has been approved by the City;
- (b) conditions affecting the Footpath Works that were not reasonably capable of identification prior to the date of this document;
- (c) the extent of any refinement of the design of the Footpath Works permitted by this clause 9 of Schedule 3;
- (d) any modification to the Development Consent made and approved under section 96 of the Act or any other development consent granted that relates to the Footpath Works; and
- (e) the reasonable requirements of the City, including in regard to the Standards.

### 9.2 Final design of Footpath Works

- (a) Prior to lodging any Development Application with a consent authority under the Act, the Developer must submit to the City's Representative for approval:
  - (i) detailed design drawings of the Footpath Works that reflect the plans and specifications set out in Annexure A to this document; and
  - (ii) a detailed costs estimate (certified by a Quantity Surveyor) setting out the estimated cost of the Footpath Works.
- (b) Within 30 Business Days after the City's Representative has received the detailed design drawings and detailed costs estimate, the City will inform the Developer in writing as to whether the detailed design drawings and costs estimate are approved. If the detailed design drawings or costs estimate are not approved, the City will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the required information, following which the process outlined in this paragraph (b) will apply again.
- (c) Regarding the costs estimate, the Developer agrees that the City may:
  - (i) reject items included within the Quantity Surveyor's Assessment which are not directly related to the Footpath Works;
  - (ii) require substantiation for the costs of items where the amount estimated is considered by the City to be excessive;

- (iii) require an adjustment to the costs estimate to reflect a variation to the design required under this clause 9.2 of Schedule 3.
- (d) If the Developer:
  - (i) fails to prepare the detailed design drawings or detailed costs estimate; or
  - (ii) does not provide further information or modify the detailed design drawings or detailed costs estimate,

in accordance with this clause 9.2 of Schedule 3, then the City may exercise its rights under clause 12 of this document in order to carry out the Footpath Works itself at the cost of the Developer.
- (e) The Developer agrees that the value of the Footpath Works may be adjusted following completion of the process set out in this clause 9.2 of Schedule 3. The Developer acknowledges that the scope of the Footpath Works will not change or reduce if the costs required to complete those works is greater than the amount estimated at the date of this document.

### 9.3 Preparation of and changes to construction design drawings

- (a) Following approval of the detailed design drawings by the City in accordance with clause 9.2 of Schedule 3, the Developer must promptly:
  - (i) prepare construction design drawings that comply with the detailed design drawings; and
  - (ii) provide the City with a copy of the construction design drawings.
- (b) The City, acting reasonably, may by written notice to the Developer at any time, approve, vary or direct the Developer to vary the construction design drawings so that the Footpath Works reflect:
  - (i) the Standards;
  - (ii) a departure or discrepancy from the plans approved under clause 9.2 of Schedule 3; or
  - (iii) any other standard or specification for materials or methodology for carrying out works that is adopted by the City from time to time, provided that any direction given under this clause 9.3(b)(iii) of Schedule 3 does not significantly increase:
    - (A) the cost the Footpath Works; or
    - (B) the complexity of implementation of the Footpath Works that may lead to a significant delay in the completion of the Footpath Works.
- (c) Within 20 Business Days of receiving a notice from the City under clause 9.3(b) of Schedule 3, the Developer must:

- (i) to the extent practicable, use reasonable endeavours to comply with the notice given by the City; or
- (ii) if the Developer determines that the notice given by the City is unreasonable or impracticable, notify a dispute in accordance with clause 13 of this document.

If the Developer does not provide any response during the 20 Business Days after receiving a notice from the City under clause 9.3(b) of Schedule 3, it is deemed that the Developer accepts the notice given by the City and will take all steps required to comply with the notice.

- (d) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under this clause 9.3(d) 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 has complied with its obligations under this document.

## 10. CONSTRUCTION OF FOOTPATH WORKS

### 10.1 Insurance

- (a) From commencement of the Footpath Works until expiration of the Defects Liability Period, 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 Footpath Works;
  - (iii) construction works insurance in relation to the Footpath 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 Footpath 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.

## 10.2 Approvals and consents

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

## 10.3 Construction work

The Developer must, at its cost:

- (a) carry out and Complete the Footpath Works in accordance with all approvals and consents relating to the Footpath Works, including any approval given by the City under this document;
- (b) carry out and Complete the Footpath Works in accordance with the construction design drawings approved by the City under clause 9.3 of Schedule 3;
- (c) ensure that all Footpath Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Footpath Works are structurally sound, fit for purpose and suitable for their intended use;
- (d) ensure that each part of the Footpath Works are Complete by the due date specified for that part in clause 1 of Schedule 3 and promptly after becoming aware advise the City's Representative of any significant delays in Completing the Footpath Works or delays that may impact the delivery of the Public Benefits by the due dates specified in clause 1 of Schedule 3; and
- (e) comply with all reasonable directions of the City in respect to construction of the Footpath Works.

## 10.4 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 Footpath 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 Footpath 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.

## 11. STANDARDS

General

The following list of Standards are included for information purposes only, and as a guide to the relevant standards for the general nature of the work identified as Footpath Works in this document. The City makes no representation or warranty as to the currency of the standards identified, or their application on the final design of the Footpath Works. The Developer must make its own enquiries regarding whether any standard has been replaced or supplemented.

#### Conflict

In the event that an Australian Standard prescribes a different level of material, finish, work or workmanship than those contained in a City Standard, then the higher of the two Standards will apply. If there is a conflict between Standards then the Developer must request the City nominate the correct and applicable Standard. The City's decision as to the applicable standard is final.

#### Relevant Australian Standards – Verge Works, Through site links

- ) AS 1725 Geotechnical Site investigations
- ) AS 4455 Masonry Units and segmental pavers
- ) AS 4678 Earth Retaining Structures
- ) AS 3600 Concrete Structures
- ) AS 2876 Concrete kerbs and channels
- ) AS 1158 Road Lighting
- ) AS 1743 Road signs
- ) AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- ) AS 1428 Design for Access and Mobility
- ) AS 3500 Plumbing and Drainage
- ) AS 3700 Masonry Structures
- ) AS 2890 Parking Facilities
- ) AS 1428 Design for Access and Mobility
- ) As 4454 Composts, soil conditioners and mulches

#### Relevant Australian Standards – Roads (including pedestrian areas)

- ) AS 1725 Geotechnical Site investigations
- ) AS 4455 Masonry Units and segmental pavers
- ) AS 4678 Earth Retaining Structures
- ) AS 3600 Concrete Structures
- ) AS 2876 Concrete kerbs and channels

- ) AS 1158 Road Lighting
- ) AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- ) AS 1428 Design for Access and Mobility
- ) AS 3500 Plumbing and Drainage
- ) AS 3700 Masonry Structures
- ) AS 2890 Parking Facilities
- ) AS 1428 Design for Access and Mobility
- ) AS 1742 Manual of uniform traffic control devices
- ) AS 1743 Road Signs

City Standards (All Works)

- ) City of Sydney Contaminated Lands DCP 2004
- ) Sydney Street Code 2013
- ) Sydney Lights Code 2013
- ) City of Sydney Access Policy
- ) Sydney Street Technical Specification and Drawings
- ) City of Sydney Street Tree Master Plan 2011
- ) Stormwater Drainage Strategy for mid block (prepared by Webb McKeown consulting engineers)

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

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name of officer

456 Kent Street, Sydney NSW 2000  
\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Position of officer

EXECUTED by Kubis Rosebery Pty  
Ltd ABN 23 130 500 060 in  
accordance with s127(1) of the  
Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

## ANNEXURE A

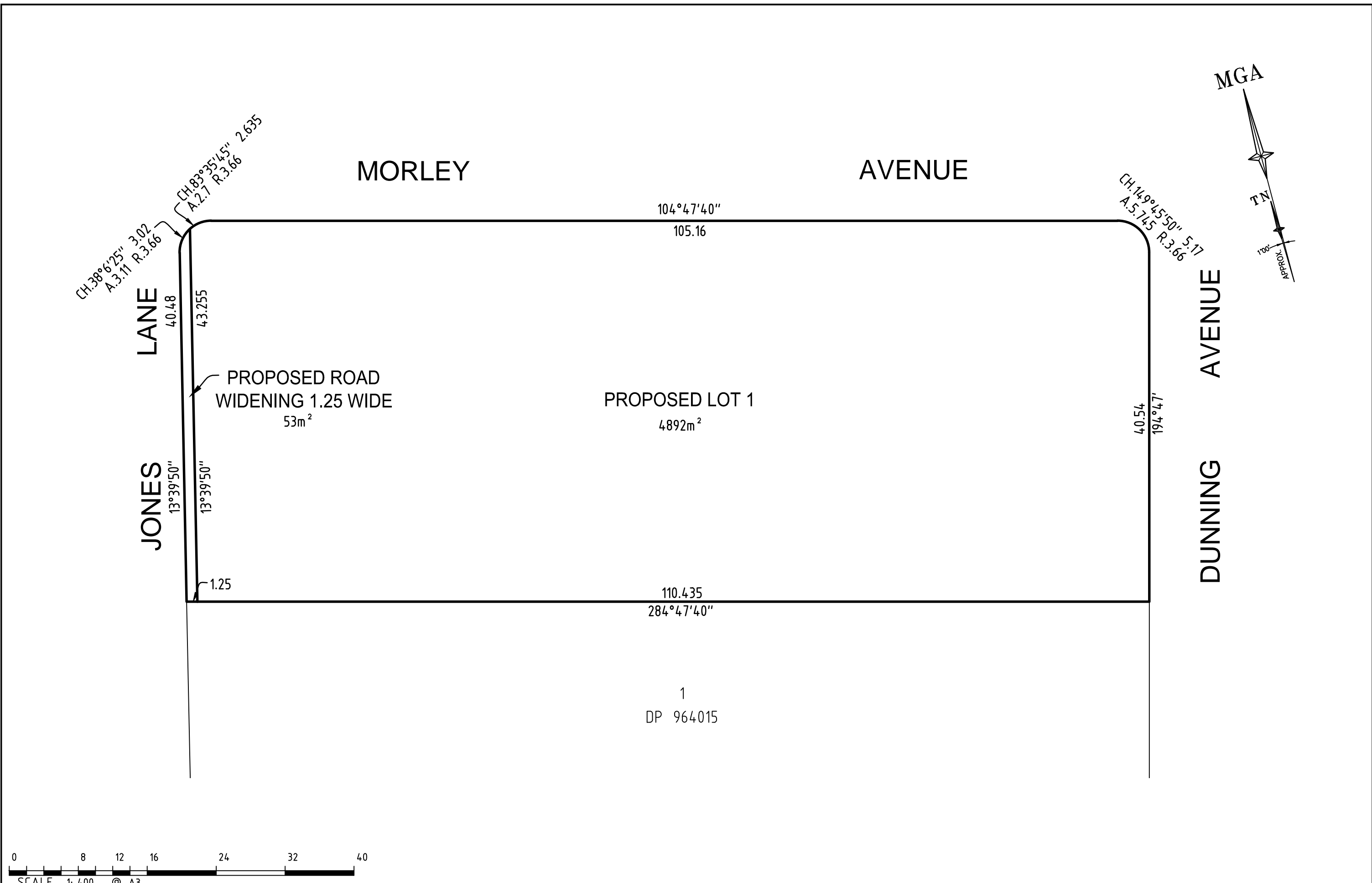
### Public Benefits – additional plans and specifications

#### Footpath Works

Construction of a 1.25m footpath including but not limited to:

- demolition and excavation;
- remediation to a minimum depth of 1.5m below finished ground level to a standard that is fit for purposes and in accordance with an approved Remediation Action Plan;
- supply and installation of an 1.25m width in situ concrete footpath; and
- installation and adjustment of any services as required to service the Development.





Revision	Date	Description	Reference
D	00/00/00	-	00
C	00/00/00	-	00
B	00/00/00	-	00
A	00/00/00	-	00

THIS IS THE PLAN REFERRED TO  
IN MY LETTER DATED:  
-  
.....  
Registered Surveyor NSW

Client KUBIS ROSEBERRY PTY LTD  
Drawing title  
PLAN OF PROPOSED ROAD WIDENING OF JONES LANE  
AT No.102-108 DUNNING AVENUE,  
BEING LOT 50 DP1171307 ROSEBERRY

datum  
AHD  
site Area  
4945m<sup>2</sup>  
LGA  
SYDNEY

43727 PSUB

scale  
1:400 @A3

date of survey  
19/02/18

SHEET  
OF 1 | 1

## ANNEXURE B VALUATION REPORT AND WORKSHEET

### VALUATION REPORT

In completing the Valuation Report, the Suitably Qualified Valuer must:

- (a) in determining the market values, assume that each residential and car parking lot within the Development:
  - (i) is free of all encumbrances;
  - (ii) may be used for general residential purposes and is not restricted to an Affordable Housing use;
  - (iii) is or can be fully serviced to its boundary;
  - (iv) is an individual lot suitable in size, but no larger than the size necessary, for the permissible uses as contemplated by the approvals applying to it;
  - (v) has appropriate public road frontage and access; and
  - (vi) is capable of being developed for its intended use as contemplated under the approvals applying to it without reliance on the implementation of any additional public infrastructure external to the site;
- (b) in determining the market value rate, comply with the applicable Practice Standards and Guidance Notes for such valuations as published from time to time by the Australian Property Institute (NSW Division), except where such standards and guidelines conflict with this clause in which case this clause prevails;
- (c) include as an annexure to the report a copy of the instructions received and a list of other documents relied upon;
- (d) identify:
  - (i) the subject land being valued;
  - (ii) the date of inspection and valuation;
  - (iii) the registered proprietor;
  - (iv) the legal description of the subject land;
  - (v) the services and amenities;
  - (vi) location description, including any external factors that influence the desirability of development on the Land to residential purchasers, either positively or negatively; and
  - (vii) zoning and town planning considerations that apply to the Land including a description of the Development, if approved;

- (e) include:
  - (i) a detailed explanation of the valuation methodologies adopted including all calculations and workings; and
  - (ii) details of relevant comparable sales and rental evidence appropriately analysed to support the valuation and a detailed explanation of the relativity of comparable sales.

## WORKSHEET

The figures in this worksheet are indicative only, and have been used to show how the calculations are made.

### Total Benefit Allocation

$$\text{Planning Gain} \times 0.5$$

Example:

$$(\$8,000,000 \times 0.5) = \$4,000,000$$

### Contribution Value

$$(\text{BA} + (0.5 \times \text{AFSV})) - (\text{VFW} + \text{VCPL})$$

Where:

BA is the Benefit Allocation

AFSV is the Additional DA Floor Space Value

VFW is the Attributed Value of the Footpath Works

VCPL is the Attributed Value of the Car Park Lots

Example:

$$(\$4,000,000 + (0.5 \times \$1,131,428)) - (\$30,000 + \$200,000) = \$4,335,714$$

term	value	explanation
Benefit Allocation	\$4,000,000	Planning Gain x 0.5
Additional DA Floor Space Value	\$1,131,428	Additional Floor Space Rate (R2) x Additional DA Floor Space = \$2,828.57 x 400
Additional Floor Space Rate (R2)	\$2,828.57	This is the current rate.
Additional DA Floor Space	400	square metres
Attributed Value of Footpath Works	\$30,000	
Attributed Value of the Car Park Lots	\$200,000	Attributed Value of the Car Park Lot x number of car park lots required for affordable housing component = \$50,000 x 4

## Affordable Housing Floor Space

Contribution Value / Agreed Market Value Rate

Example:

$$(\$4,335,714 / \$14,000) = 309.69 \text{ sqm}$$

term	value	explanation
Contribution Value	\$4,335,714	(BA + (0.5 x AFSV)) – (VFW + VCPL)
Agreed Market Value Rate	\$14,000	

## ANNEXURE C

### SPECIAL CONDITIONS

Special Conditions to the following effect must be included in the Contract for Sale.

#### 1. DEFECT LIABILITY

- (a) For the purposes of this Condition:
  - (i) "Defects Liability Period" is a period of 12 months from the date of completion of the Contract for Sale, as may be extended under sub clause 1(f); and
  - (ii) "Bank Guarantee" is an unconditional undertaking by an authorised deposit taking institution under the Banking Act 1959 (Cth), on terms and in a form acceptable to the Community Housing Provider, to pay on demand the Bank Guarantee Amount; and
  - (iii) "Bank Guarantee Amount" means 10% of the total of the Attributed Market Value Rate for the Affordable Housing Units and the Attributed Value of the Car Park Lots.
- (b) Upon completion of the Contract for Sale, the Developer must provide the Community Housing Provider with the Bank Guarantee. The obligation of the Developer under this clause is an essential term.
- (c) If the Community Housing Provider notifies the Developer of a Defect in the Affordable Housing Units or Car Park Lots during the Defects Liability Period, then, following written notice from the Community Housing Provider, the Developer must promptly correct or replace (at the Developer's expense) the defective elements of the Affordable Housing Units or Car Park Lots.
- (d) If the Developer is unable or unwilling to comply with sub clause 1(c) or fails to rectify the Defect within three months of receiving notice from the Community Housing Provider then the Community Housing Provider may:
  - (i) rectify the Defect itself;
  - (ii) make a claim on the Guarantee without notice to the Developer; and
  - (iii) recover the reasonable costs from the Developer as a debt due and owing to the Community Housing Provider.
- (e) If the Community Housing Provider calls upon the Bank Guarantee in accordance with sub clause 1(d), then the Developer must immediately provide to the Community Housing Provider a replacement Bank Guarantee to ensure that the Community Housing Provider is in possession of a Bank Guarantee for a face value equivalent to the Bank Guarantee Amount.
- (f) The Developer is not entitled to, and must not seek, an injunction against either the Community Housing Provider or the issuer of the Guarantee (if applicable) preventing a demand or payment under the Guarantee (whether

the demand extends to the whole of the Guarantee or part thereof) or the use to which the proceeds of such a demand can be put.

- (g) The Community Housing Provider must give the Developer and its contractors access to the Affordable Housing Units or Car Park Lots at the agreed time to enable the Developer to rectify the Defect, but the Developer must, and must ensure that its contractors, comply with the reasonable requirements of the Community House Provider.
- (h) Where rectification works is undertaken in respect of a Defect, the Defects Liability Period in respect of the rectification work in relation to that Defect will be extended for a period of 12 months, commencing on the date the rectification work is complete.

## 2. LIMITS TO DESIGN CHANGES

The Developer must not amend, change or otherwise alter the location of the Affordable Housing Units, or the design, finishes or fittings agreed between the Developer and the Community Housing Provider at the date of entering this Contract for Sale, except with the written consent of the Community Housing Provider.

ANNEXURE D  
DRAFT NOVATION DEED



## Novation Deed

Kubis Rosebery Pty Ltd  
ABN 23 130 500 060  
and

[#]  
and

The Council of the City of Sydney

THIS NOVATION DEED is made on

PARTIES:

- (1) Kubis Rosebery Pty Ltd ABN 23 130 500 060 of [#] (Outgoing Party); and
- (2) [#] of [#] (New Party).
- (3) The Council of the City of Sydney of Town Hall House, 456 Kent Street, Sydney NSW 2000

BACKGROUND

- (A) The Outgoing Party and the Continuing Party are parties to the Agreement.
- (B) The Outgoing Party and the New Party are parties to the Deed of consent.
- (C) The parties have agreed that the New Party will replace the Outgoing Party under the Agreement from the Effective Date.

The parties agree:

1. DEFINITIONS

1.1 In this Deed:

Agreement means the planning agreement between the Outgoing Party and the Continuing Party dated [#].

Business Day means a day other than a Saturday, Sunday or public holiday in Sydney.

Claim means any action, claim, demand or proceeding.

Effective Date means [#].

Loss includes any damage, liability, loss, charge, cost (including professional costs and legal costs on a solicitor-client basis), expense, fine or penalty (where permitted by law), whether direct, indirect, consequential (including pure economic loss), present or future, ascertained or unascertained, actual, prospective or contingent and whether arising from breach of contract, in tort (including negligence), in restitution, under statute or otherwise at law.

1.2 Capitalised terms used but not defined in this Deed have the meanings given in the Agreement.

2. NOVATION

2.1 From the Effective Date:

- (a) the New Party is a party to the Agreement instead of the Outgoing Party;

- (b) all references to the Outgoing Party in the Agreement are references to the New Party;
- (c) the New Party:
  - (i) enjoys all of the rights and benefits of the Outgoing Party under the Agreement;
  - (ii) is bound by the terms of the Agreement as if the New Party had originally been a party to the Agreement; and
  - (iii) must perform all obligations of the Outgoing Party under the Agreement which are to be performed after the Effective Date; and
- (d) the Continuing Party is bound by the Agreement as if the New Party had originally been a party to the Agreement.

### 3. RELEASES

#### 3.1 From the Effective Date:

- (a) the Continuing Party releases and discharges the Outgoing Party from the further performance of the Agreement; and
- (b) the Outgoing Party releases and discharges the Continuing Party from all future Claims in connection with the Agreement,

except where clauses 4 and 5 provide differently.

### 4. PRE-EXISTING CLAIMS

#### 4.1 Nothing in this Deed affects or prejudices any rights or liabilities which:

- (a) the Outgoing Party may have against the Continuing Party in connection with matters arising before the Effective Date; or
- (b) the Continuing Party may have against the Outgoing Party in connection with matters arising before the Effective Date.

### 5. INDEMNITIES

#### 5.1 The Outgoing Party must pay to the New Party on demand the amount of all Loss of the New Party in connection with any act or omission of the Outgoing Party which gives rise to or contributes to any:

- (a) breach of the Agreement; or
- (b) Claim in connection with the subject-matter of the Agreement.

#### 5.2 The New Party must pay to the Outgoing Party on demand the amount of all Loss of the Outgoing Party in connection with any act or omission of the New Party which gives rise to or contributes to any:

- (a) breach of the Agreement; or

(b) Claim in connection with the subject-matter of the Agreement.

6. AGREEMENT CONFIRMED

6.1 The Agreement is confirmed and remains in full force and effect except as amended by this Deed.

6.2 If there is an inconsistency between this Deed and the Agreement, the provisions of this Deed prevail to the extent of that inconsistency.

7. NOTICES

7.1 Delivery of notice

(a) A notice or other communication required or permitted to be given to a party under this Deed must be in writing and may be delivered:

- (i) personally to the party;
- (ii) by leaving it at the party's address;
- (iii) by posting it by regular prepaid post, priority prepaid post, registered post, priority registered post or express post addressed to the party at the party's address;
- (iv) by facsimile to the party's facsimile number; or
- (v) by electronic mail to the party's email address,

in each case, as specified in the notice details of that party.

(b) If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

7.2 Particulars for delivery

(a) The notice details of each party are set out on page 1 of this Deed under the heading 'Parties' (or as notified by a party to the other parties in accordance with this clause).

(b) Any party may change its notice details by giving notice to the other parties.

7.3 Time of service

A notice or other communication is deemed delivered:

- (a) if delivered personally or left at the person's address, upon delivery;
- (b) if posted within Australia to an Australian address:
  - (i) using regular prepaid post or registered post, 6 Business Days after posting;
  - (ii) using priority prepaid post or priority registered post, 4 Business Days after posting; and

- (iii) using express post, 2 Business Days after posting;
- (c) if posted from a place to an address in a different country, 10 Business Days after posting;
- (d) if delivered by facsimile, subject to clause 7.3(f), at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the recipient's facsimile;
- (e) if delivered by electronic mail, subject to clause 7.3(f), at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
- (f) if received after 5.00pm in the place it is received, or on a day which is not a business day in the place it is received, at 9.00am on the next business day.

## 8. GOVERNING LAW

This Deed is governed by the law applying in New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of that state or territory.

## 9. INTERPRETATION

### 9.1 General

In this Deed, unless expressed to the contrary:

- (a) words denoting the singular include the plural and vice versa;
- (b) the word 'includes' in any form is not a word of limitation;
- (c) where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- (e) no rule of construction applies to the disadvantage of the party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

### 9.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- (a) a gender includes all other genders;
- (b) any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;

- (c) any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- (d) writing includes writing in digital form;
- (e) 'this Deed' is to this Deed as amended from time to time;
- (f) 'A\$', '\$', 'AUD" or 'dollars' is a reference to Australian dollars;
- (g) a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- (h) any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- (i) a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- (j) a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- (k) any body (Original Body) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

## 10. GENERAL

### 10.1 Variation

This Deed may only be varied by a document executed by the parties.

### 10.2 Counterparts

This Deed may be executed in counterparts, all of which taken together constitute one document.

### 10.3 Liability

An obligation of any 2 parties binds them jointly and severally.

### 10.4 Severability

- (a) Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- (b) If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

#### 10.5 Waiver

The failure of a party at any time to insist on performance of any provision of this Deed is not a waiver of their right at any later time to insist on performance of that or any other provision of this Deed.

#### 10.6 Further assistance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

#### 10.7 Survival and enforcement of indemnities

(a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Deed.

(b) It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

#### 10.8 No merger

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion.

#### 10.9 Business Day

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

#### 10.10 No fetter

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

Signing Page

Executed by the parties as a deed:

Executed by Kubis Rosebery Pty Ltd ABN 23)  
130 500 060 in accordance with s 127(1) of the  
Corporations Act 2001: )

)

)

.....

Signature of Director

Signature of Director (or Company  
Secretary)

.....

Print full name

Print full name

Executed by \*\*\* in accordance with s 127(1))  
of the Corporations Act 2001:

)

)

)

.....

Signature of Director

Signature of Director (or Company  
Secretary)

.....

Print full name

Print full name



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

\_\_\_\_\_  
Signature of officer

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name of officer

456 Kent Street, Sydney NSW 2000  
\_\_\_\_\_  
Address of witness

\_\_\_\_\_  
Position of officer