

Planning Agreement

277-291 Anzac Parade, Kingsford

Randwick City Council (ABN 77 362 844 121) (**Council**)

Iglu No. 215 Pty Ltd (ACN 653 910 064) as trustee for the Iglu Property Trust No. 215 (**Developer**)

Prepared by:

Marsdens Law Group

Level 1
49 Dumaresq Street
CAMPBELLTOWN NSW 2560

Tel: (02) 4626 5077

Fax: (02) 4626 4826

Ref: 44 7616



Table of Contents

Parties.....	1
Background.....	1
Operative Provisions.....	1
1 Agreement.....	1
2 Definitions and interpretation	1
2.1 Defined terms.....	1
2.2 Interpretation	1
3 Application and operation of document	2
3.1 Planning Agreement	2
3.2 Application.....	2
3.3 Operation	2
4 Application of s7.11 and s7.12.....	2
4.1 Application.....	2
4.2 Section 7.24	2
5 Provision of Contributions	2
5.1 Affordable Housing Levy Monetary Contribution	2
5.2 CIC Monetary Contribution	2
5.3 CIC Works.....	3
5.4 Section 7.12 Monetary Contribution.....	4
5.5 Section 7.12 Works	4
5.6 Indexation of Amounts payable by Developer	6
5.7 Conduct of Works.....	6
5.8 Design and specification of Works.....	7
5.9 No credit or re-imbursements	8
5.10 Access to the land and location of Works	8
6 Completion of Works	8
6.1 Completion	8
6.2 Issue of Completion Notice	8
6.3 Inspection by Council.....	9
6.4 Rectification Notice	9
6.5 Works-As-Executed-Plan	9
6.6 Acceptance of Works	9
7 Defects Liability	10
7.1 Defects Notice.....	10
7.2 Developer to Rectify Defects	10
7.3 Right of Council to Step-In	10
7.4 Consequence of Step-In	10
7.5 Costs of Council	10
8 Variation of scope or timing for provision of the Works.....	11
8.1 Variation to the scope of the Work	11
8.2 Deferral of the timing of Completion of the Works	11
9 Developer Warranties and Indemnities.....	12
9.1 Warranties.....	12
9.2 Indemnity.....	12
10 Security	12
10.1 Provision of Security	12
10.2 Replacement of Security	12
10.3 Council may call on Security	13
10.4 Top up of Security	13
10.5 Release of Works Securities	13
10.6 Release of Defects Security.....	13
10.7 Construction Certificate must be withheld	13
10.8 Subdivision Certificate must be withheld	14
10.9 Occupation Certificate must be withheld	14
11 Registration of this document	14
11.1 Registration of this document	14
11.2 Obligations of Developer.....	14
11.3 Discharge from the Register	15
12 Assignment.....	15

12.1	Application.....	15
12.2	Restriction on Assignment	15
12.3	Procedure for Assignment	15
13	Dispute Resolution.....	16
13.1	Notice of dispute	16
13.2	Conduct pending resolution	16
13.3	Further steps required before proceedings.....	16
13.4	Disputes for mediation or expert determination	16
13.5	Disputes for mediation	17
13.6	Choice of expert	17
13.7	Directions to expert	17
13.8	Expert may commission reports.....	18
13.9	Expert may convene meetings.....	18
13.10	Other courses of action	18
13.11	Confidentiality of information provided in dispute resolution process	19
13.12	Final determination of expert	19
13.13	Costs	19
13.14	Remedies available under the Act	19
13.15	Urgent relief.....	20
14	Breach of this document	20
14.1	Breach Notice.....	20
14.2	Events of Default.....	20
14.3	Consequences of Events of default	20
15	Termination, Rescission or Determination.....	20
15.1	Termination	20
15.2	Consequence of termination	20
15.3	Determination	21
16	Position of Council.....	21
16.1	Consent authority	21
16.2	Document does not fetter discretion	21
16.3	Severance of provisions.....	21
16.4	No Obligations.....	21
17	Confidentiality	22
17.1	Document not Confidential.....	22
17.2	Other Confidential Information	22
18	GST	22
18.1	Defined GST Terms	22
18.2	GST to be Added to Amounts Payable	22
18.3	GST Obligations to Survive Termination	23
19	General	23
19.1	Obligation to act in good faith	23
19.2	Legal costs	23
20	Administrative provisions	23
20.1	Notices	23
20.2	Entire agreement.....	24
20.3	Waiver	24
20.4	Cooperation.....	24
20.5	Counterparts	24
20.6	Amendment.....	24
20.7	Unenforceability	24
20.8	Power of Attorney.....	24
20.9	Governing law	24
21	Trust limitation of liability	25
21.1	Trust	25
21.2	Limitation of liability	25
21.3	Claims against Developer	25
21.4	Exceptions to limitation	25
	Schedule 1– Requirements under s7.4	26
	Part 2 - Interpretational Rules	31
	Annexure 1 – Location Plan	39
	Annexure 2 – Local road improvement and upgrades at Strachan Street	40

Annexure 3 – Laneway upgrades at Houston Lane 41

Execution page 42

Planning Agreement

277-291 Anzac Parade, Kingsford

Parties

Council	Name	Randwick City Council
	Address	30 Frances Street Randwick NSW 2031
	ABN	77 362 844 121
Developer	Name	Iglu No. 215 Pty Ltd (ACN 653 910 064) as trustee for the Iglu Property Trust No. 215
	Address	Level 4 68 York Street Sydney NSW 2000
	ABN	42 518 096 550

Background

- A** The Developer owns the Land.
- B** The Developer wishes to carry out the Development.
- C** The Developer has obtained the Development Consent.
- D** The Developer has agreed to make the Contributions on and subject to the terms of this document.

Operative Provisions

1 Agreement

The agreement of the parties is set out in the Operative Provisions of this document, in consideration of, among other things, the mutual promises contained in this document.

2 Definitions and interpretation

2.1 Defined terms

In this document, words beginning with a capital letter that are defined in Part 1 of **Schedule 2** have the meaning ascribed to them in that schedule.

2.2 Interpretation

The interpretational rules contained in Part 2 of **Schedule 2** apply in the interpretation of this document.

3 Application and operation of document

3.1 Planning Agreement

Subject to clause 3.3, this document is a planning agreement:

- (1) within the meaning set out in s7.4 of the Act; and
- (2) governed by Subdivision 2 of Part 7 of the Act.

3.2 Application

This document is made in respect of the Development and applies to both the Land and the Development.

3.3 Operation

This document operates:

- (1) as a deed from the date that it is executed by both parties; and
- (2) as a planning agreement for the purpose of the Act from the date that the Development Consent becomes operative.

4 Application of s7.11 and s7.12

4.1 Application

This document excludes the application of section 7.11 or section 7.12 of the Act to the Development.

4.2 Section 7.24

This document does not exclude the application of s7.24 of the Act to the Development.

5 Provision of Contributions

5.1 Affordable Housing Levy Monetary Contribution

- (1) The Developer must pay the Affordable Housing Levy Monetary Contribution to Council in accordance with **Schedule 3**.
- (2) The Affordable Housing Levy Monetary Contribution is made for the purposes of this document when Council receives the full amount of the Affordable Housing Levy Monetary Contribution payable under this document:
 - (a) in cash;
 - (b) by unendorsed bank cheque; or
 - (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

5.2 CIC Monetary Contribution

- (1) If the Developer is required to pay a CIC Monetary Contribution under clause 5.3, the Developer must pay the CIC Monetary Contribution in accordance with **Schedule 3**.

- (2) The CIC Monetary Contribution is made for the purposes of this document when Council receives the full amount of the CIC Monetary Contribution payable under this document:
 - (a) in cash;
 - (b) by unendorsed bank cheque; or
 - (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.
- (3) If the Developer does not carry out the CIC Works as provided for in clause 5.3, Council will use the CIC Monetary Contribution for the delivery of community infrastructure on the same land that the CIC Works would have been carried out. However, Council has the absolute discretion as to which parts of that land on which it undertakes works and is not obligated to carry out works on all of that land.

5.3 CIC Works

- (1) Subject to the balance of this clause 5.3, the Developer must Complete the CIC Works in accordance with this document and in particular **Schedule 3** and **Schedule 4**.
- (2) The Developer acknowledges and agrees that:
 - (a) Council, at any time prior to the approval of the detailed design of the CIC Works under clause 5.8 and for any reason may provide written notice to the Developer that it no longer agrees with the CIC Works being carried out; or
 - (b) if the parties are not able to agree on the detailed design of the CIC Works in accordance with clause 5.8 which is to occur prior to the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works) (without the need for dispute resolution), or if the Developer forms the view prior to the issue of that Construction Certificate that the Developer cannot carry out the CIC Works at a reasonable cost, then the Developer may serve written notice on Council advising that it will no longer undertake the CIC Works.
- (3) If clause 5.3(2)(b) applies, the Developer agrees to provide the Council with a copy of the Quantity Surveyor report referred to in clause 5.8(2)(b) prior to the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation, all retaining structures, demolition, piling, shoring excavation and basement works).
- (4) The Developer must notify Council in writing of its intention to:
 - (a) pay the CIC Monetary Contribution in accordance with clause 5.2; or
 - (b) carry out the CIC Works in accordance with this clause 5.3,

prior to the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works).
- (5) Upon:
 - (a) the Developer notifying Council in accordance with paragraph (4) of its intention to pay the CIC Monetary Contribution; or
 - (b) either event referred to in paragraph (2) occurring,

the provisions of paragraphs (6) to (8) below have no effect, and the Developer:

- (c) is under no obligation to undertake the CIC Works; and
 - (d) is required to pay the full amount of the CIC Monetary Contributions under clause 5.2.
- (6) Prior to Completion of the CIC Works, the Developer (at its own cost) must submit to Council a report from a Quantity Surveyor confirming the GST exclusive cost of the Completed CIC Works (**CIC Works Value**).
- (7) The parties agree that the report provided by the Quantity Surveyor under paragraph (6) is final and binding on the parties, subject to any manifest error.
- (8) Upon the Developer providing the Quantity Surveyor report required under paragraph (6) and Completion of the CIC Works:
- (a) the amount of the CIC Monetary Contribution required to be paid by the Developer under this document is reduced by the CIC Works Value; and
 - (b) the Developer must pay to Council in accordance with clause 5.2 (and in accordance with the timing for the Completion of the CIC Works specified in **Schedule 3**) any difference between the CIC Monetary Contribution and the CIC Works Value. For the purpose of clarity, if the CIC Works Value is the same as the Contribution Value for the CIC Monetary Contribution, then the Developer will not be required to make any CIC Monetary Contribution.

5.4 Section 7.12 Monetary Contribution

- (1) If the Developer is required to pay a Section 7.12 Monetary Contribution under clause 5.5, the Developer must pay the Section 7.12 Monetary Contribution to Council in accordance with **Schedule 3**.
- (2) The Section 7.12 Monetary Contribution is made for the purposes of this document when Council receives the full amount of the Section 7.12 Monetary Contribution payable under this document:
- (a) in cash;
 - (b) by unendorsed bank cheque; or
 - (c) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by Council.

5.5 Section 7.12 Works

- (1) Subject to the balance of this clause 5.5, the Developer must Complete the Section 7.12 Works in accordance with this document and in particular **Schedule 3** and **Schedule 4**.
- (2) The Developer acknowledges and agrees that:
- (a) Council, at any time prior to the approval of the detailed design of the Section 7.12 Works under clause 5.8 and for any reason may provide written notice to the Developer that it no longer agrees with the Section 7.12 Works being carried out; or
 - (b) if the parties are not able to agree on the detailed design of the Section 7.12 Works in accordance with clause 5.8 which is to occur prior to the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation,

all retaining structures, demolition, piling, shoring, excavation and basement works) (without the need for dispute resolution) or if the Developer forms the view prior to the issue of that Construction Certificate that the Developer cannot carry out the Section 7.12 Works at a reasonable cost, then the Developer may serve written notice on Council advising that it will no longer undertake the Section 7.12 Works.

- (3) If clause 5.5(2)(b) applies, the Developer agrees to provide the Council with a copy of the Quantity Surveyor report referred to in clause 5.8(2)(b) prior to the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation, all retaining structures, demolition, piling, shoring excavation and basement works).

- (4) The Developer acknowledges and agrees that it must notify Council in writing of its intention to:

- (a) pay the Section 7.12 Monetary Contribution in accordance with clause 5.4; or
- (b) carry out the Section 7.12 Works in accordance with this clause 5.5,

prior to the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works).

- (5) Upon:

- (a) the Developer notifying Council in accordance with paragraph (4) of its intention to pay the Section 7.12 Monetary Contribution; or
- (b) either event referred to in paragraph (2) occurring,

the provisions of paragraphs (6) to (8) below have no effect and the Developer:

- (c) is under no obligation to undertake the Section 7.12 Works; and
- (d) is required to pay the full amount of the Section 7.12 Monetary Contributions under clause 5.4.

- (6) Prior to Completion of the Section 7.12 Works, the Developer (at its own cost) must submit to Council a report from a Quantity Surveyor confirming the GST exclusive cost of the Completed Section 7.12 Works (**Section 7.12 Works Value**).

- (7) The parties agree that the report provided by the Quantity Surveyor under paragraph (6) is final and binding on the parties, subject to any manifest error.

- (8) Upon the Developer providing the Quantity Surveyor report referred to in paragraph (6) and Completion of the Section 7.12 Works:

- (a) the amount of the Section 7.12 Monetary Contribution required to be paid by the Developer under this document is reduced by the Section 7.12 Works Value; and
- (b) the Developer must pay to Council in accordance with clause 5.4 (and in accordance with the timing for the Completion of the Section 7.12 Works specified in **Schedule 3**) any difference between the Section 7.12 Monetary Contribution and the Section 7.12 Works Value. For the purpose of clarity, if the Section 7.12 Works Value is the same as the Contribution Value for the Section 7.12 Monetary Contribution, then the Developer will not be required to make any Section 7.12 Monetary Contribution.

5.6 Indexation of Amounts payable by Developer

Unless an indexation methodology is specified in **Schedule 3** in relation to a Contribution Value (in which case that indexation methodology will apply to that Contribution Value), each Contribution Value (other than the Affordable Housing Levy Monetary Contribution) will be increased annually (with the calculation to be made as from the date the relevant Contribution is required to be provided to Council under this document) in accordance with the following formula:

$$A = \frac{B \times C}{D}$$

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this document;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = the Index most recently published before the commencement date of the Development Consent.

If **A** is less than **B**, then the relevant Contribution Value will not change.

5.7 Conduct of Works

The Developer, at its cost, must:

- (1) obtain any required consent by a relevant Authority, for the construction and use of the Works;
- (2) carry out and complete the Works to the satisfaction of the Council by the time specified in **Schedule 3**; and
- (3) carry out and complete the Works:
 - (a) in accordance with the specifications (if any) referred to in **Schedule 4** for the Works or the design and specifications agreed or determined to apply to the Works under clause 5.8;
 - (b) in accordance with any relevant development consent;
 - (c) in accordance with the requirements of, or consents issued by, any Authority;
 - (d) ensuring that:
 - (i) all necessary measures are taken to protect people, property, and the environment;
 - (ii) unnecessary interference with the passage of people and vehicles is avoided;
 - (iii) nuisances and unreasonable noise and disturbances are prevented; and

- (iv) all relevant laws and regulations with respect to water, air, noise and land pollution (including 'pollution incidents') as defined under the *Protection of the Environment Operations Act 1997* (NSW) are complied with,
- (e) in accordance with any Australian Standards applicable to works of the same nature as each aspect of the Works; and
- (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the Works.

5.8 Design and specification of Works

- (1) The Developer must:
 - (a) consult with Council with respect to the development of the detailed design and specification with respect to the Works; and
 - (b) ensure that the relevant design is consistent with, and has regard to, any relevant policies of Council as identified in the Development Consent.
- (2) Before the issue of a Construction Certificate for above ground works in connection with the Development (which excludes any Construction Certificate for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works), the Developer must submit to Council:
 - (a) for its approval, the detailed design and specification for the Works; and
 - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the Works in accordance with the detailed design.
- (3) The detailed design and specification for the Works must be prepared by the Developer having specific regard to:
 - (a) the specification for the Works set out in **Schedule 4**; and
 - (b) the Contribution Value of the Works.
- (4) Within thirty (30) days of the date of the first submission referred to in paragraph (2), Council, acting reasonably and with regard to the Works required under **Schedule 3** and **Schedule 4**, will do either of the following:
 - (a) Notify the Developer in writing of its approval of the detailed design and specification. The Developer is then to carry out and complete the Works in accordance with that design and specification.
 - (b) Notify the Developer in writing that it does not approve of the detailed design, specification and provide the Developer with reasons for this.
- (5) If Council does not respond within 30 days of the first submission referred to in paragraph (2), the detailed design and specification for the Works is deemed to be approved by Council.
- (6) If Council notifies the Developer in writing that it does not approve of the detailed design and specification, the Developer may:
 - (a) elect to amend the detailed design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.8 applies to that amendment; or

- (b) if the Developer does not agree with the modifications requested by Council, then, subject to:

- (i) clause 5.5 (in respect of Section 7.12 Works); and

- (ii) clause 5.3 (in respect of CIC Works),

it may refer the relevant matter for dispute resolution in accordance with this document.

5.9 No credit or re-imbursements

If the Developer's actual cost of carrying out the Works are greater than the Contribution Value for those Works, the Developer is not entitled to claim credit or reimbursement, as the case may be, for the difference.

5.10 Access to the land and location of Works

- (1) The Developer must permit the Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test the Works.
- (2) Council must give the Developer prior reasonable notice before it enters the Land and ensure that the Council and its employees comply with all reasonable directions of the Developer and all site construction requirements including without limitation all workplace health and safety requirements and reporting to a site office or site superintendent.
- (3) The Developer acknowledges and agrees that:
 - (a) access to any Council owned land upon which the Works will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow those Works to be carried out;
 - (b) the Developer must obtain any such approvals or consents before commencing the Works; and
 - (c) Council will consider any application for such approval or consent at the relevant time and is not bound to grant such approval or consent.

6 Completion of Works

6.1 Completion

For the purpose of this document the Works are Completed when:

- (1) the Works have been accepted as, or deemed to have been, Completed in accordance with this clause 6; and
- (2) any other obligation with respect to the Works which must be discharged prior to the Completion of the Works in accordance with this document has been discharged.

6.2 Issue of Completion Notice

If the Developer considers that the Works are complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the Works; and

- (3) specifies the date on which the Developer believes the Works were completed,
(Completion Notice).

6.3 Inspection by Council

- (1) Council must inspect the Works set out in a Completion Notice within ten (10) business days of the receipt of that notice.
- (2) If Council fails to carry out an inspection required under paragraph (1) the Works referred to in the relevant Completion Notice will be deemed to be Complete and acceptable to Council.

6.4 Rectification Notice

- (1) Within fourteen (14) days of inspecting the Works set out in a Completion Notice, Council must provide notice in writing (**Rectification Notice**) to the Developer that the Works set out in the Completion Notice:
- (a) have been Completed; or
 - (b) have not been Completed, in which case the notice must also detail:
 - (i) those aspects of the Works which have not been Completed; and
 - (ii) the work Council requires the Developer to carry out in order to rectify the deficiencies in those Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the Works set out in the Completion Notice will be deemed to have been Completed and acceptable to Council.
- (3) Where Council serves a Rectification Notice on the Developer, the Developer must:
- (a) rectify the Works in accordance with that notice; or
 - (b) serve a notice on the Council that it disputes the matters set out in the notice.
- (4) Where the Developer:
- (a) serves notice on Council in accordance with paragraph (3)(b), the dispute resolution provisions of this document apply; or
 - (b) rectifies the Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the Works it has rectified.

6.5 Works-As-Executed-Plan

Prior to Completion of the Works the Developer must provide to Council a full works-as-executed-plan in respect to the Works.

6.6 Acceptance of Works

Council accepts ownership, possession and control of, and risk in, any Works carried out on the land generally identified in the Location Plan when the Works are Completed.

7 Defects Liability

7.1 Defects Notice

- (1) Where any part of the Works have been Completed but those Works contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant Works; or
 - (b) will require maintenance or rectification works to be performed on them at some time in the future as a result of the existence of the defect,

(**Defect**) Council may issue a defects notice (**Defects Notice**) concerning those Works but only within the Defects Liability Period.
- (2) A Defects Notice must contain the following information:
 - (a) the nature and extent of the Defect;
 - (b) the work Council requires the Developer to carry out in order to rectify the Defect; and
 - (c) the time within which the Defect must be rectified (which must be a reasonable time and not less than fifteen (15) business days).

7.2 Developer to Rectify Defects

- (1) The Developer must rectify the Defects contained within a Defects Notice as soon as practicable after receipt of the Defects Notice.
- (2) The Developer must follow the procedure set out in clause 6 in respect of the satisfaction of the Defects Notice.

7.3 Right of Council to Step-In

Council, at its absolute discretion, may enter upon the Land for the purpose of satisfying the Defects Notice where the Developer has failed to comply with a Defects Notice but only after giving the Developer five (5) business days written notice of its intention to do so.

7.4 Consequence of Step-In

If Council elects to exercise the step-in rights granted to it under clause 7.3 then:

- (1) Council may:
 - (a) enter upon any part of the land upon which the relevant Works are being carried out that it requires access to in order to satisfy the obligations of the Developer in accordance with the Defects Notice; and
 - (b) rectify the relevant Defects in accordance with the Defects Notice; and
- (2) the Developer must not impede or interfere with Council in undertaking that work.

7.5 Costs of Council

Where Council exercises its step-in rights, the Developer will be liable for the reasonable costs incurred by the Council in rectifying the Defects, where Council may call upon the Defects Security provided by the Developer pursuant to clause 10 and recover as a debt due in a court

of competent jurisdiction any difference between the amount of the Defects Security and the costs incurred by the Council in rectifying the Defects.

8 Variation of scope or timing for provision of the Works

8.1 Variation to the scope of the Work

- (1) The Developer may request that Council approve in writing a variation to the scope of the Works.
- (2) The scope of the Works is not to be varied unless Council and the Developer agree in writing to the variation.
- (3) Council may refuse to agree to a variation of the Works at its absolute discretion.

8.2 Deferral of the timing of Completion of the Works

- (1) Notwithstanding any other provision of this document, if the Developer forms the view at any time, that:
 - (a) it is unable to Complete the Works by the time specified in **Schedule 3**; or
 - (b) it believes that there is a risk of damage to the Works if they are delivered by the time required in **Schedule 3**,

(Deferred Works), then the Developer may seek Council's approval to defer the Completion of the Works by providing written notice to the Council:

 - (c) identifying the Works that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of the Works; and
 - (e) identifying the anticipated time for Completion of the Works.
- (2) The Council, acting reasonably, must give the Developer a written notice within fourteen (14) days of the date upon which the Developer serves written notice upon Council in accordance with paragraph (1) stating:
 - (a) whether or not it consents to the deferral of the Deferred Works;
 - (b) the revised date for Completion required by Council; and
 - (c) any reasonable conditions Council requires with respect to the deferral.
- (3) The Developer acknowledges and agrees that Council may require additional Security on account of that deferral provided that the amount of any such security held by Council as a result does not exceed one hundred and ten (110%) of the then estimated cost to complete the Works as determined by the Council.
- (4) If the Council consents to the deferral of the Deferred Works, then the following applies:
 - (a) The Developer must comply with any conditions required by Council under paragraph (2)(c) above.
 - (b) Provided the Developer satisfies those conditions, the Developer will not be considered to be in breach of this document as a result of a failure to achieve Completion of the relevant Deferred Works by the time for Completion specified in this document.

- (c) The time for completion of the Deferred Works under this document is the revised date for Completion approved by Council.

9 Developer Warranties and Indemnities

9.1 Warranties

The Developer warrants to Council that:

- (1) it is legally and beneficially entitled to the Land;
- (2) it is able to fully comply with its obligations under this document;
- (3) it has full capacity to enter into this document; and
- (4) there is no legal impediment to it entering into this document, or performing the obligations imposed under it.

9.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the Works until such time as a Completion Notice is issued for the Work but only to the extent that any such Claim does not arise as a result of the negligent acts or omissions of Council.

10 Security

10.1 Provision of Security

- (1) The Developer must deliver to Council separate Bank Guarantees or other forms of security to the satisfaction of the Council:
 - (a) prior to the issue of a Construction Certificate in respect of the Development, for an amount equivalent to one hundred and ten per cent (110%) of the Contribution Value for the Works (**Works Securities**); and
 - (b) prior to the Completion of an item of Works, for an amount equivalent to ten per cent (10%) of the Contribution Value for that item of Works (**Defects Security**),(collectively referred to as the **Security**).
- (2) The Developer may satisfy its obligations (either in whole or in part), by directing Council to retain any Security held by Council which is required to be released by Council under this document.
- (3) If the parties have agreed that the Developer is to pay Council a Monetary Contribution in lieu of carrying out the Works then no Security will be payable.

10.2 Replacement of Security

- (1) The Developer may replace any Security provided by it at any time, provided that the amount of that replacement is not less than that which is required to be provided under this document.
- (2) On receipt of a replacement Security, Council must immediately release the Security being replaced and return it to the Developer.

10.3 Council may call on Security

- (1) If the Developer commits an Event of Default then Council, without limiting any other remedies available to it, may call on any Security provided by the Developer.
- (2) If Council calls on any Security, it may use the amount so paid to it in satisfaction of any costs incurred by it in remedying the Event of Default.

10.4 Top up of Security

If Council calls on the Security, Council, by notice in writing to the Developer, may require the Developer to provide a further or replacement Security in an amount that, when added to any unused portion of any Security then held by Council, does not exceed the amount of the Security Council is entitled to hold at that time under this document.

10.5 Release of Works Securities

Unless:

- (1) Council has made or intends to make a demand against any Security provided by the Developer;
- (2) the Development Contribution on account of which that Security was provided has not been made; or
- (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Works Securities within ten (10) business days of such a request being made.

10.6 Release of Defects Security

Unless:

- (1) Council has made or intends to make a demand against any Security provided by the Developer;
- (2) the relevant Defects Liability Period has not expired; or
- (3) the Developer is in breach of this document at the relevant time,

Council, upon a written request being made by the Developer, must return the Defects Security within ten (10) business days of such a request being made.

10.7 Construction Certificate must be withheld

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Construction Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Construction Certificate can be issued.
- (2) Any such Construction Certificate must not be issued until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

10.8 Subdivision Certificate must be withheld

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for a Subdivision Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Subdivision Certificate can be issued.
- (2) Any such Subdivision Certificate must not be issued until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

10.9 Occupation Certificate must be withheld

- (1) The Developer may only make, or cause, suffer or permit the making of, an application for an Occupation Certificate in respect of the Development if, at the date of the application, the Developer is not in breach of an obligation to make a Contribution under this document that is required to be made before that Occupation Certificate can be issued.
- (2) Any such Occupation Certificate must not be issued until such time as:
 - (a) the breach is rectified; or
 - (b) Council calls upon the Security provided by the Developer in respect of the Contribution to which the breach relates.

11 Registration of this document

11.1 Registration of this document

The Developer acknowledges and agrees that:

- (1) this document must be registered on the title to the Land pursuant to section 7.6 of the Act; and
- (2) subject to clause 11.2, Council will undertake that registration at the cost of the Developer.

11.2 Obligations of Developer

- (1) The Developer, at its own expense, will promptly after this document comes into operation, and before the issue of any Construction Certificate for the Development, take all necessary and practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (a) the consent of each person who:
 - (i) has an estate or interest in the Land; or
 - (ii) is seized or possessed of an estate or interest in the Land;
 - (b) the execution of any documents; and
 - (c) the production of any relevant title documentation,

to enable the registration of this document in accordance with clause 11.1.

- (2) The Developer, at its own expense, will take all necessary and practical steps, and otherwise do anything that the Council reasonably requires:
 - (a) to allow the lodgement of this document with the Registrar-General as soon as reasonably practicable after this document comes into operation but in any event, no later than thirty (30) business days after that date; and
 - (b) to allow the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.

11.3 Discharge from the Register

The Council will provide a release and discharge of this document so that it may be removed from the folios of the Register for the Land (or any part of it) when:

- (1) the Developer's obligations under this document having been performed; or
- (2) if this document is terminated or otherwise comes to an end for any other reason.

12 Assignment

12.1 Application

This clause 12 only applies during any period when this document is not registered on the title of the Land.

12.2 Restriction on Assignment

Other than in accordance with this clause 12 the Developer may not:

- (1) Assign any part of the Land; and/or
- (2) Assign their rights or obligations under this document.

12.3 Procedure for Assignment

- (1) If the Developer:
 - (a) wishes to Assign any part of the Land; and/or
 - (b) wishes to Assign its rights or obligations under this document,then the Developer must:
 - (c) provide a written request to Council for the consent of Council to the relevant Assignment;
 - (d) provide Council with any evidence required by Council, acting reasonably, to satisfy Council that the third party in whose favour the Assignment is to be made (**Assignee**) is reasonably capable of performing the obligations under this document that are to be Assigned to it; and
 - (e) obtain written consent of Council to the relevant Assignment; and
 - (f) at no cost to Council, procure:

- (i) the execution by the Assignee of an appropriate deed where the Assignee agrees to be bound by the terms of this document; and
 - (ii) the provision of all Security to Council by the Assignee that the Developer is required to provide under this document (and any additional securities if required by Council acting reasonably) at the same time as, or prior to, entering into that deed.
- (2) Council is under no obligation to consider granting its consent to any request made by the Developer under paragraph (1)(c) if, at the time the request is made, the Developer is in breach of this document.

13 Dispute Resolution

13.1 Notice of dispute

- (1) If a dispute or lack of certainty between the parties arises in connection with this document or its subject matter (**Dispute**), then either party (**First Party**) must give to the other (**Second Party**) a notice which:
 - (a) is in writing;
 - (b) adequately identifies and provides details of the Dispute;
 - (c) stipulates what the First Party believes will resolve the Dispute; and
 - (d) designates its representative (**Representative**) to negotiate the Dispute.
- (2) The Second Party must, within five (5) business days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the parties being together, the **Representatives**).

13.2 Conduct pending resolution

The parties must continue to perform their respective obligations under this document if there is a Dispute but will not be required to complete the matter the subject of the Dispute, unless the appropriate party indemnifies the other parties against costs, damages and all losses suffered in completing the disputed matter if the Dispute is not resolved in favour of the indemnifying party.

13.3 Further steps required before proceedings

Subject to clauses 13.14 and 13.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 13.5 or determination by an expert under clause 13.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within five (5) business days of the date a notice under clause (2) is served.

13.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the Dispute, then the parties must agree within five (5) business days to refer the matter to mediation under clause 13.5 or expert determination under clause 13.6.

13.5 Disputes for mediation

- (1) Mediation must be conducted by a mediator agreed by the parties and, if the parties cannot agree within five (5) business days, then by a mediator appointed by the President of the Law Society of New South Wales for the time being.
- (2) If the mediation referred to in paragraph (1) has not resulted in settlement of the Dispute and has been terminated, the parties may agree to have the matter determined by expert determination under clause 13.6.

13.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 13.6 applies.
- (2) The Dispute must be determined by an independent expert in the relevant field:
 - (a) agreed between and appointed jointly by the parties; or
 - (b) in the absence of agreement within five (5) business days after the date that the matter is required to be determined by expert determination, appointed by the President of the Law Society of New South Wales for the time being.
- (3) If the parties fail to agree as to the relevant field within five (5) business days after the date that the matter is required to be determined by expert determination, either party may refer the matter to the President of the Law Society of New South Wales for the time being whose decision as to the relevant field is final and binding on the parties.
- (4) The expert appointed to determine a Dispute:
 - (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the parties before being appointed of the extent of the expert's understanding of each party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the parties.
- (5) The parties must promptly enter into a document with the expert appointed under this clause 13.6 setting out the terms of the expert's determination and the fees payable to the expert.

13.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 13.6, the independent expert must give effect to the intent of the parties entering into this document and the purposes of this document.
- (2) The expert must:
 - (a) act as an expert and not as an arbitrator;
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (c) not accept verbal submissions unless both parties are present;

- (d) on receipt of a written submission from one party, ensure that a copy of that submission is given promptly to the other party;
 - (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the Dispute;
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each party ten (10) business days to make further submissions;
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- (3) The parties must comply with all directions given by the expert in relation to the resolution of the Dispute and must within the time period specified by the expert, give the expert:
- (a) a short statement of facts;
 - (b) a description of the Dispute; and
 - (c) any other documents, records or information which the expert requests.

13.8 Expert may commission reports

- (1) Subject to paragraph (2):
 - (a) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (b) the parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 13.6(5) of this deed.
- (2) The parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

13.9 Expert may convene meetings

- (1) The expert must hold a meeting with all of the parties present to discuss the Dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (2) The parties agree that a meeting under paragraph (1) is not a hearing and is not an arbitration.

13.10 Other courses of action

If the mediation referred to in clause 13.5 has not resulted in settlement of the dispute, the mediation has been terminated and the parties have not agreed to refer the matter to expert determination within five (5) business days after termination of the mediation, then either party

may take whatever course of action it deems appropriate for the purpose of resolving the Dispute.

13.11 Confidentiality of information provided in dispute resolution process

- (1) The parties agree, and must procure that the mediator and the expert agree as a condition of his or her appointment:
 - (a) subject to paragraph (2), to keep confidential all documents, information and other material disclosed to them during or in relation to the mediation or expert determination;
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law or any Authority to do so; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination for a purpose other than the mediation or expert determination.
- (2) The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the Dispute;
 - (b) admissions or concessions made by a party during the mediation or expert determination in relation to the Dispute; and
 - (c) information, documents or other material concerning the dispute which are disclosed by a party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

13.12 Final determination of expert

The parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

13.13 Costs

- (1) Each party must contribute equally to the costs of any mediator appointed under clause 13.5.
- (2) If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

13.14 Remedies available under the Act

This clause 13 does not operate to limit the availability of any remedies available to Council under the Act.

13.15 Urgent relief

This clause 13 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

14 Breach of this document

14.1 Breach Notice

If the Developer breaches this document, Council may serve a notice on the Developer (**Breach Notice**) specifying:

- (1) the nature and extent of the alleged breach;
- (2) if:
 - (a) the breach is capable of being rectified other than by the payment of compensation, what Council requires the Developer to do in order to rectify the breach; or
 - (b) the breach is not capable of being rectified other than by payment of compensation, the amount of compensation Council requires the Developer to pay in order to rectify the breach, and
- (3) the time within which Council requires the breach to be rectified, which must be a reasonable time or not less than ten (10) business days.

14.2 Events of Default

The Developer commits an **Event of Default** if it:

- (1) fails to comply with a Breach Notice; or
- (2) becomes subject to an Insolvency Event.

14.3 Consequences of Events of default

Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:

- (1) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
- (2) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

15 Termination, Rescission or Determination

15.1 Termination

This document terminates in the following events:

- (1) The parties agree in writing to terminate the operation of this document at any time.
- (2) The Development Consent lapses.

15.2 Consequence of termination

Upon termination of this document:

- (1) all future rights and obligations of the parties are discharged; and
- (2) all pre-existing rights and obligations of the parties continue to subsist.

15.3 Determination

This document will determine upon the Developer satisfying all of the obligations imposed on it in full.

16 Position of Council

16.1 Consent authority

The parties acknowledge that Council is a consent authority with statutory rights and obligations pursuant to the terms of the Planning Legislation.

16.2 Document does not fetter discretion

This document is not intended to operate to fetter, in any unlawful manner:

- (1) the power of Council to make any Law; or
- (2) the exercise by Council of any statutory power or discretion,

(Discretion).

16.3 Severance of provisions

- (1) No provision of this document is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this document is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:
 - (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 16 is substantially satisfied; and
 - (b) in the event that paragraph (1)(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this document has full force and effect; and
 - (c) to endeavour to satisfy the common objectives of the parties on relation to the provision of this document which is held to be an unlawful fetter to the extent that it is possible having regard to the relevant court judgment.
- (2) Where the Law permits Council to contract out of a provision of that Law or gives Council power to exercise a Discretion, then if Council has in this document contracted out of a provision or exercised a Discretion under this document, then to the extent of this document is not to be taken to be inconsistent with the Law.

16.4 No Obligations

Nothing in this document will be deemed to impose any obligation on Council to exercise any of its functions under the Act in relation to the Development Consent, the Land or the Development in a certain manner.

17 Confidentiality

17.1 Document not Confidential

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

17.2 Other Confidential Information

- (1) The parties acknowledge that:
 - (a) Confidential Information may have been supplied to some or all of the parties in the negotiations leading up to the making of this document; and
 - (b) The parties may disclose to each other further Confidential Information in connection with the subject matter of this document.
 - (c) Subject to paragraphs (2) and (3), each party agrees:
 - (i) not to disclose any Confidential document received before or after the making of this document to any person without the prior written consent of the party who supplied the Confidential Information; or
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this document is kept confidential and protected against unauthorised use and access.
- (2) A party may disclose Confidential Information in the following circumstances:
 - (a) in order to comply with the Law, or the requirements of any Authority; or
 - (b) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (3) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

18 GST

18.1 Defined GST Terms

Defined terms used in this clause 18 have the meaning ascribed to them in the GST Law.

18.2 GST to be Added to Amounts Payable

- (1) If GST is payable on a Taxable Supply made under, by reference to or in connection with this document, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (2) This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive.
- (3) Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this document are exclusive of GST.

18.3 GST Obligations to Survive Termination

This clause 18 will continue to apply after expiration of termination of this document.

19 General

19.1 Obligation to act in good faith

The parties must at all times:

- (1) cooperate and use their best endeavours to profitably and professionally give effect to their rights and obligations set out in this document;
- (2) not unreasonably delay any action, approval, direction, determination or decision which is required of them;
- (3) make approvals or decisions that are required of them in good faith and in a manner consistent with the completion of the transactions set out in this document; and
- (4) be just and faithful in their activities and dealings with the other parties.

19.2 Legal costs

The Developer agrees to:

- (1) pay or reimburse the reasonable legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this document;
- (2) pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including in relation to:
 - (a) the registration or removal of this document on the title to the Land in accordance with clause 10.6; and
 - (b) any breach or default by the Developer of its obligations under this document,

within ten (10) business days of receipt of a Tax Invoice from Council.

20 Administrative provisions

20.1 Notices

- (1) Any notice, consent or other communication under this document must be in writing and signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:
 - (a) delivered to that person's address;
 - (b) sent by pre-paid mail to that person's address; or
 - (c) transmitted by e-mail to that person's e-mail address.
- (2) A notice given to a person in accordance with this clause is treated as having been given and received:
 - (a) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
 - (b) if sent by pre-paid mail, on the third business day after posting; and

- (c) if transmitted by e-mail to a person's e-mail address and a correct and complete confirmation of receipt is received, on the day of transmission if a business day, otherwise on the next business day.
- (3) For the purpose of this clause the address of a person is the address set out in this document or another address of which that person may from time to time give notice to each other person.

20.2 Entire agreement

This document is the entire agreement of the parties on the subject matter. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this document.

20.3 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the parties to be bound by the waiver.

20.4 Cooperation

Each party must sign, execute and deliver all agreements, documents, instruments and act reasonably and effectively to carry out and give full effect to this document and the rights and obligations of the parties under it.

20.5 Counterparts

This document may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument. A party who has executed a counterpart of this document may exchange it with another party by emailing a pdf (portable document format) copy of, the executed counterpart to that other party, and if requested by that other party, will promptly deliver the original by hand or post. Failure to make that delivery will not affect the validity and enforceability of this document.

20.6 Amendment

This document may only be amended or supplemented in writing signed by the parties.

20.7 Unenforceability

Any provision of this document which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid or enforceable, and is otherwise capable of being severed to the extent of the invalidity or enforceability, without affecting the remaining provisions of this document or affecting the validity or enforceability of that provision in any other jurisdiction.

20.8 Power of Attorney

Each attorney who executes this document on behalf of a party declares that the attorney has no notice of:

- (1) the revocation or suspension of the power of attorney by the grantor; or
- (2) the death of the grantor.

20.9 Governing law

The law in force in the State of New South Wales governs this document. The parties:

- (1) submit to the exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeal from those courts in respect of any proceedings in connection with this document; and
- (2) may not seek to have any proceedings removed from the jurisdiction of New South Wales on the grounds of *forum non conveniens*.

21 Trust limitation of liability

21.1 Trust

The Developer enters into this document in its capacity as trustee of the Iglu Property Trust No. 215 (**Developer Trust**) and in no other capacity.

21.2 Limitation of liability

Subject to clause 21.4, a liability arising under or in connection with this document (whether that liability arises under a specific provision of this document, for breach of contract or otherwise) can be enforced against the Developer to the extent to which it can be satisfied out of the assets of the Developer Trust out of which the Developer is actually indemnified for the liability.

21.3 Claims against Developer

Subject to clause 21.4, the parties other than the Developer may not seek the appointment of a receiver (except in relation to the property of the Developer Trust), a liquidator, an administrator or any similar person to the Developer or prove in any liquidation, administration or arrangement of or affecting the Developer (except in relation to the property of the Developer Trust).

21.4 Exceptions to limitation

The provisions of this clause 21 will not apply to any obligation or liability of the Developer to the extent that it is not satisfied because there is a reduction in the extent, or an extinguishment, of the Developer's indemnification out of the assets of the Developer Trust, as a result of the Developer's fraud, negligence, breach of trust or breach of duty.

Schedule 1– Requirements under s7.4

REQUIREMENT UNDER THE ACT	THIS PLANNING AGREEMENT
Planning instrument and/or development application – (Section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) Not applicable
Description of land to which this agreement applies – (Section 7.4(3)(a))	Lots A & B in DP394221, Lots 11 & 12 in DP716333, Lot 3 in DP129966 and Lot 101 DP 860478, known as 277-291 Anzac Parade, Kingsford.
Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))	Not applicable
Application of section 7.11 of the Act – (Section 7.4(3)(d))	Does not apply.
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Does not apply.
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Does not apply. See clause 4.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 13.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 10.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	See clause 16.

Schedule 2 – Defined terms and Interpretation

Part 1 - Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Affordable Housing Levy Monetary Contribution	means the Contribution so described in Schedule 3 .
Assign	means, as the context requires, any assignment, sale, transfer, disposition, declaration of trust over or other assignment of a legal and/or beneficial interest.
Authority	means (as appropriate) any: (1) federal, state or local government; (2) department of any federal, state or local government; (3) any court or administrative tribunal; or (4) statutory corporation or regulatory body.
Bank Guarantee	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: (1) Australia and New Zealand Banking Group Limited. (2) Commonwealth Bank of Australia. (3) Macquarie Bank. (4) National Australia Bank Limited. (5) St George Bank Limited. (6) Westpac Banking Corporation. (7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.
Business Day	means a day which is not a Saturday, Sunday or a public holiday in New South Wales.
CIC Monetary Contribution	means the Contribution so described in Schedule 3 .
CIC Works	means the Contribution so described in Schedule 3 and Schedule 4 .
CIC Works Value	has the meaning ascribed in clause 5.3(6).

Claim	means, against any person, any allegation, action, demand, cause of action, suit, proceeding, judgement, debt, damage, loss, cost, expense or liability howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.
Community Contribution	Infrastructure means the CIC Monetary Contribution and/or CIC Works.
Completed	means completed in accordance with the requirements of this document.
Completion Notice	has the meaning ascribed in clause 6.2.
Confidential Information	means any information and all other knowledge at any time disclosed (whether in writing and orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which: (1) is by its nature confidential; (2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise); (3) any party knows or ought to know is confidential; (4) is information which may be reasonably considered to be of a confidential nature.
Construction Certificate	has the same meaning as in section 6.4(a) of the Act.
Contributions	means the Works and the Monetary Contributions as set out in Schedule 3 and Schedule 4 .
Contribution Value	means the amount specified in Schedules 3 in the column headed "contribution value" for each item of the Contributions as indexed in accordance with this document.
Defect	has the meaning ascribed to it in clause 7.1.
Defects Notice	has the meaning ascribed to it in clause 7.1.
Defects Liability Period	means, with respect to the Works, a period of twelve (12) months commencing on the date of Completion of the Works.
Defects Security	has the meaning ascribed to it in clause 10.1(1)(b).
Development	means the development permitted to be undertaken in accordance with the Development Consent, consisting of the partial demolition of an existing structure and construction of a part three (3) and part eighteen (18) storey mixed use development over one (1) level of basement comprising retail, commercial and 285 co-living (student accommodation) rooms with associated

indoor and outdoor communal space and landscaping at 277-291 Anzac Parade, Kingsford.

Development Application

means an application for the Development Consent.

Development Consent

means the development consent issued for development application number DA/477/2022.

Dispute

has the meaning ascribed to it in clause 13.1.

GST Law

means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Index

means the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of payment.

Insolvency Event

means the happening of any of the following events:

- (1) Application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order or an order is made that a body corporate be wound up.
- (2) An application which is not withdrawn or dismissed within fourteen (14) days is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate or one of them is appointed, whether or not under an order.
- (3) Except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, agreement of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them.
- (4) A body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved.
- (5) A body corporate is or states that it is insolvent.
- (6) As a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), a body corporate is taken to have failed to comply with a statutory demand;
- (7) A body corporate is or makes a statement from which it may be reasonably deduced that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*.
- (8) A body corporate takes any step to obtain protection or is granted protection from its

creditors, under any applicable legislation or an administrator is appointed to a body corporate.

- (9) A person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event.
- (10) A receiver, manager or receiver and manager is appointed to the Company.
- (11) A claim is filed in a court against a person that is not defended, released or otherwise settled within twenty eight (28) days of the date of its filing at the court.
- (12) Anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

Land

means the "Land" set out in **Schedule 1**.

Law

means all legislation, regulations, by-laws, common law and other binding order made by any Authority.

Location Plan

means the plan that is attached as **Annexure 1**.

Monetary Contributions

means the monetary contributions specified or described in **Schedule 3**.

Occupation Certificate

has the same meaning as in section 6.4(c) of the Act.

Planning Legislation

means the Act, the *Local Government Act 1993* (NSW) and the *Roads Act 1993* (NSW).

Quantity Surveyor

means a person approved by the Council who:

- (1) is a member of their respective professional organisation and has been for at least five (5) years;
- (2) practises as a quantity surveyor for works of the same nature as the relevant Works;
- (3) is active as a quantity surveyor at the time of his appointment;
- (4) has at least three (3) years experience in valuing works of the same nature as the relevant Works; and
- (5) undertakes to act fairly and promptly in accordance with the requirements of this document.

Rectification Notice

has the meaning ascribed to it in clause 6.4.

Section 7.12 Contribution

means the Section 7.12 Monetary Contribution and/or Section 7.12 Works.

Section 7.12 Monetary Contribution	means the Contribution so described in Schedule 3 .
Section 7.12 Works	means the Contribution so described in Schedule 3 and Schedule 4 .
Section 7.12 Works Value	has the meaning ascribed in clause 5.5(6).
Security	has the meaning ascribed to it in clause 10.1(1).
Works	means the CIC Works and Section 7.12 Works.
Works Securities	has the meaning ascribed to it in clause 10.1(1)(a).

Part 2 - Interpretational Rules

clauses, annexures and schedules	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
reference to statutes	a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
singular includes plural	the singular includes the plural and vice versa.
Person	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
executors, administrators, successors	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
Dollars	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
calculation of time	if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.
reference to a day	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
accounting terms	an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia.
reference to a group of persons	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.
meaning not limited	the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

next day	if an act under this document to be done by a party on or by a given day is done after 4.30pm on that day, it is taken to be done on the next day.
next business day	if an event must occur on a stipulated day which is not a business day then the stipulated day will be taken to be the next business day.
time of day	time is a reference to Sydney time.
Headings	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
Agreement	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
Gender	a reference to one gender extends and applies to the other and neuter gender.

Schedule 3 – Contributions

Item	Contributions	Public Purpose	Timing	Contribution Value
1	Affordable Housing Levy Monetary Contribution	Provision of affordable housing	Prior to the issue of a Construction Certificate for above ground works (excluding any CC for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works).	The amount of the contribution must be calculated at the time that it is required to be paid in accordance with clause 6.18 of the <i>Randwick Local Environmental Plan 2012</i> (RLEP) and the <i>Kensington and Kingsford Town Centres - Affordable Housing Plan</i> adopted by the Council on 10 December 2019 and will be calculated using: (1) the relevant indexed Affordable Housing Levy Monetary Contribution Rate pursuant to part 2.8 of the <i>Kensington and Kingsford Town Centres - Affordable Housing Plan</i> (being an amount of \$625.00 per square metre as at the date of this document); and (2) an area of 8,974 square meters of residential floor space approved by the Development Consent. The Affordable Housing Levy Monetary Contribution Rate is indexed twice a year, being the first day of January and July, with reference to the most recently published median strata dwelling price in Randwick City Local Government Area. As at the date of this document, the Contribution Value is estimated to be \$6,450,062.50 (being 8,974 square metres of residential floor space payable at a rate of \$718.75/sqm).
Community Infrastructure Contribution				

2	CIC Monetary Contribution	Improvement of local infrastructure	Prior to the issue of a Construction Certificate for above ground works (excluding any CC for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works).	If a CIC Monetary Contribution is payable, the amount of the contribution will be calculated at the time that it is required to be paid in accordance with clause 6.17 of the <i>Randwick Local Environmental Plan 2012</i> (RLEP), the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan (CIC Plan)</i> adopted by the Council on 10 December 2019 and will be calculated (which includes for the sake of clarity any indexation required in accordance with section 7 of the CIC Plan) using: (1) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of this document); and (2) an area of 4,488 square metres of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the RLEP approved under the Development Consent. As at the date of this document, the Contribution Value for the CIC Monetary Contribution is estimated to be \$2,131,800.00. (being 4,488 square metres of floor space payable at a rate of \$475/sqm).
3	CIC Works in Lieu - Anzac Parade footpaths and intersections at Anzac Parade and Strachan Street.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.5.2	\$250,000.00

4	CIC Works in Lieu - Other public realm works and upgrades at Anzac Parade.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.5.2	\$481,800.00
5	CIC Works in Lieu - Local road improvement and upgrades at Strachan Street.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.5.2	\$600,000.00
6	CIC Works in Lieu - Laneway upgrades at Houston Lane.	Improvement of local infrastructure	Prior to the issue of the first Occupation Certificate in respect of the Development.5.2	\$800,000.00
Section 7.12 Contribution				
7	Section 7.12 Monetary Contribution	Public infrastructure in the Kensington and Kingsford community.	Prior to the issue of a Construction Certificate for above ground works (excluding any CC for site preparation, all retaining structures, demolition, piling, shoring, excavation and basement works).	If a s7.12 Monetary Contribution is payable, the amount of the contribution will be calculated at the time that it is required to be paid as indexed in accordance with section 10 of the <i>Section 7.12 Development Contributions Plan - Kensington and Kingsford Town Centres</i> adopted by the Council on 10 December 2019. A s7.12 Monetary Contribution will not be payable if the value of the s7.12 Works is equal to the values of the s7.12 Monetary Contribution Amount.
8	Section 7.12 Works in Lieu - Undergrounding of	Public infrastructure in the Kensington and Kingsford community.	Prior to the issue of the first Occupation Certificate in respect of the Development.5.4	\$900,000.00

	overhead power lines on Strachan Street.			
9	Section 7.12 Works in Lieu - Poles with street lighting on Strachan Street, which must be delivered in accordance with V1 and PR4 categories of the Australian standard AS1158.1.1:2022.	Public infrastructure in the Kensington and Kingsford community.	Prior to the issue of the first Occupation Certificate in respect of the Development.5.4	\$417,250.00

Schedule 4 – Works

Item	Item of Works	Application of specification and design approval (clause 5.8)
GIC Works		
1	Anzac Parade footpaths and intersections at Anzac Parade and Strachan Street in the general location shown in Annexure 1 and as identified in Annexure 2. Pursuant to item 3 of 'Appendix – Schedule of Community Infrastructure (Kingsford)' in the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and determined in accordance with clause 5.8.	Yes
2	Other public realm works and upgrades at Anzac Parade in the general location shown in Annexure 1 and as identified in Annexure 2. Pursuant to item 5 of 'Appendix – Schedule of Community Infrastructure (Kingsford)' in the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and determined in accordance with clause 5.8.	Yes
3	Local road improvement and upgrades at Strachan Street in the general location shown in Annexure 1 and as identified in Annexure 2. Pursuant to item 11 of 'Appendix – Schedule of Community Infrastructure (Kingsford)' in the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and determined in accordance with clause 5.8.	Yes
4	Laneway upgrades at Houston Lane in the general location shown in Annexure 1 and as identified in Annexure 3. Pursuant to item 12 of 'Appendix – Schedule of Community Infrastructure (Kingsford)' in the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and determined in accordance with clause 5.8.	Yes
Section 7.12 Works		
5	Undergrounding of overhead power lines on Strachan Street in the general location shown in Annexure 1.	Yes

6	A maximum of two (2) Poles with street lighting on Strachan Street in the general location shown in Annexure 1, which must be delivered in accordance with V1 and PR3 categories of the Australian standard AS1158.1.1:2022.	Yes
---	--	-----

Check all dimensions and the conditions prior to commencement of any work.
Any provision or covering of any materials, items, plant, services or equipment
shall be the responsibility of the applicant and shall be maintained until the
completion of the works.
The site plan drawings are for general guidance only. Any discrepancies shall
immediately be referred to the architect for clarification.
All drawings may not be reproduced or distributed without prior permission from
the architect.

- Site Boundary
- Extended Site Boundary for VPA Works
- VPA Works

1:1000 - DEVELOPMENT APPLICATION
Date: 11/07/2018
Drawing No: 10000001

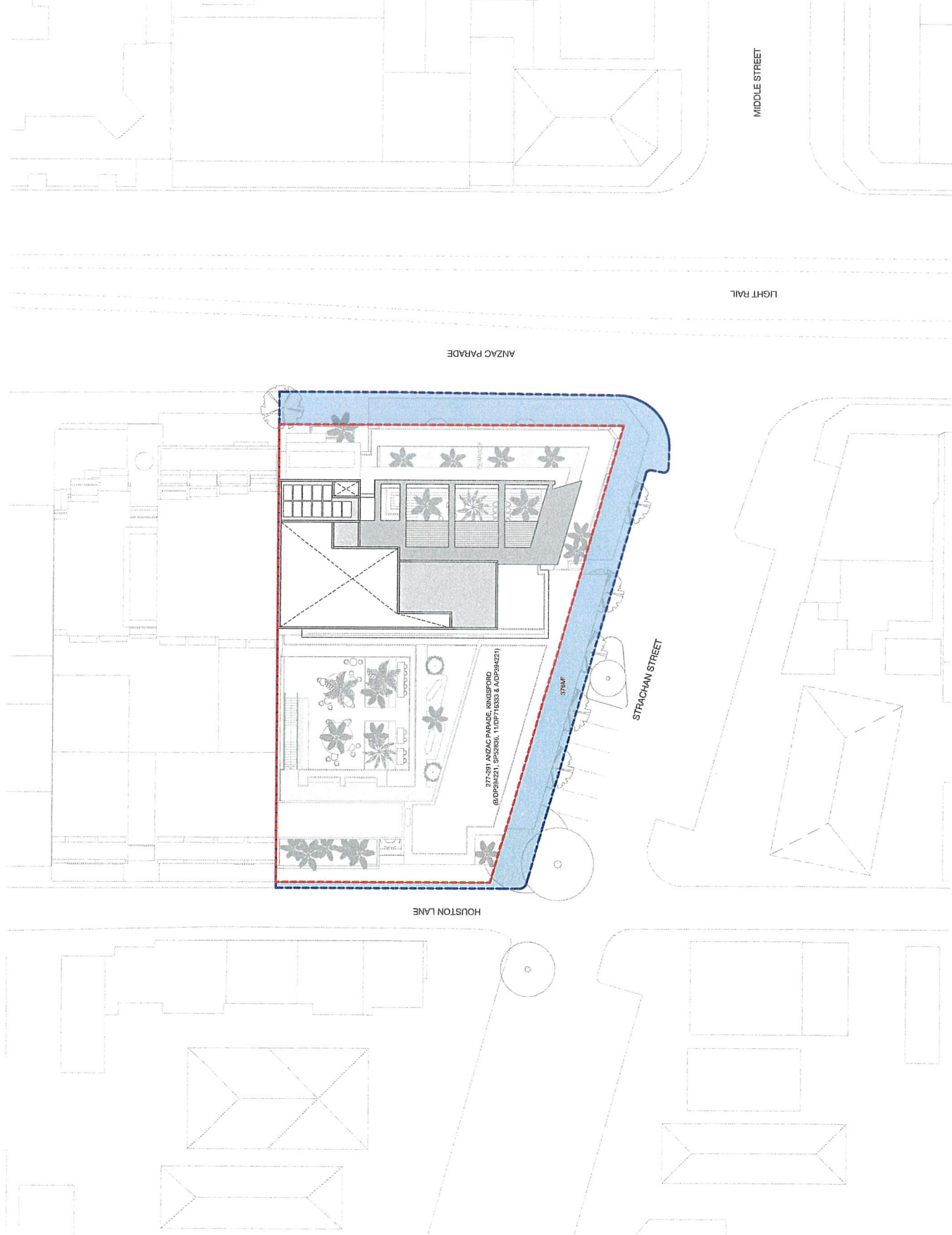
Iglu Kingsford
277-291 Anzac Parade
A01 Site & Existing
Site Plan VPA



Issue	Development Application
Scale	As Indicated @ A1
Drawn	MD
Project No.	512588
File Date	13/06/2017 5:03:11 PM
Sheet	1/1

Drawing No: A01.002
Revision: A
Bates Smart Architects Pty Ltd
1 Nicholson Street
Melbourne VIC 3002 Australia
Tel: +61 (0)3 9419 1000
Email: info@batesmart.com.au
http://www.batesmart.com.au
Bates Smart Architects Pty Ltd
ABN 68 624 743 986
Level 1, 1 Nicholson Street, Melbourne, VIC 3002
Level 1, 1 Nicholson Street, Melbourne, VIC 3002

BATESSMART.



ANZAC PARADE

277-291 ANZAC PARADE (UNDEVELOPED)
(@DPS84221, SP52356, 11/07/2018 & ADP84221)

378AF

STRACHAN STREET

MIDDLE STREET

LIGHT RAIL

HOUSTON LANE

Annexure 2 – Local road improvement and upgrades at Strachan Street



HARDWORKS SCHEDULE

22-838 - IGLU KINGSFORD - MATERIALS SCHEDULE					
CODE	TYPE	DETAIL REF.	PRODUCT INFORMATION	MATERIAL	CONSTRUCTION NOTES
PAVING & SURFACES					
P1	Insitu Concrete Paving	01/601	Product: Insitu Concrete Finish: Broom finish Thickness: To engineer specification	Concrete (Refer Council Standard)	To Engineer Specification See Landscape Specification
P2	Unit Paving (Randwick City Council Typical)	02/601	Product: Reblscrete PPX49 or equiv. Dimension: 300x300x40mm Pattern: Running Bond parallel to road	Pebblecrete (Refer Council Standard)	See Landscape Specification
TP	Tree Pit	01/651	Refer Detail	Steel (Refer Council Standard)	See Landscape Specification
E1	Typical Mild Steel Edge	06/601	Product: Mild Steel Edge Dimensions: 1.5mm thick	Fomboss	See Landscape Specification
FURNITURE					
SF1	Custom Street Furniture	03/640	Material: Mild Steel and Timber Battens Dimensions: See Detail + Specification		See Landscape Specification

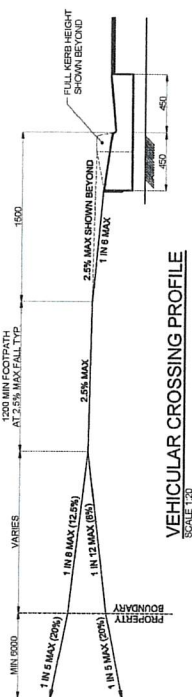
SOFTWARES SCHEDULE

CODE	BOTANIC NAME	COMMON NAME	MATURE SIZE (h x w) (m)	PROPOSED POT SIZE
TREES & PALMS				
WH	<i>Gonostemon confertus</i>	Brushbox	15 x 6	400L - 200L
SHRUBS & ACCENTS				
As	<i>Azaraea sinclairii</i> 'Subline'	Lilly Pilly	5 x 2	200mm
Coa	<i>Correa alba</i>	White Correa	1.5 x 1.5	140mm
Wf	<i>Westringia frutcosa</i>	Coastal Rosemary	2 x 5	200mm
Matrix 1 - Grasses				
Dr	<i>Dianella revoluta</i>	Spreading Flax Lily	1 x 1.5	140mm
Pa	<i>Pennisetum alopecuroides</i>	Swamp Foxtail	1 x 1	140mm
Li	<i>Dianella swalei</i>	Spiny-Head Mat Rush	1 x 1	140mm
Lt	<i>Conandra Tanika</i>	Mat Rush	0.6 x 0.6	140mm

See plan notes

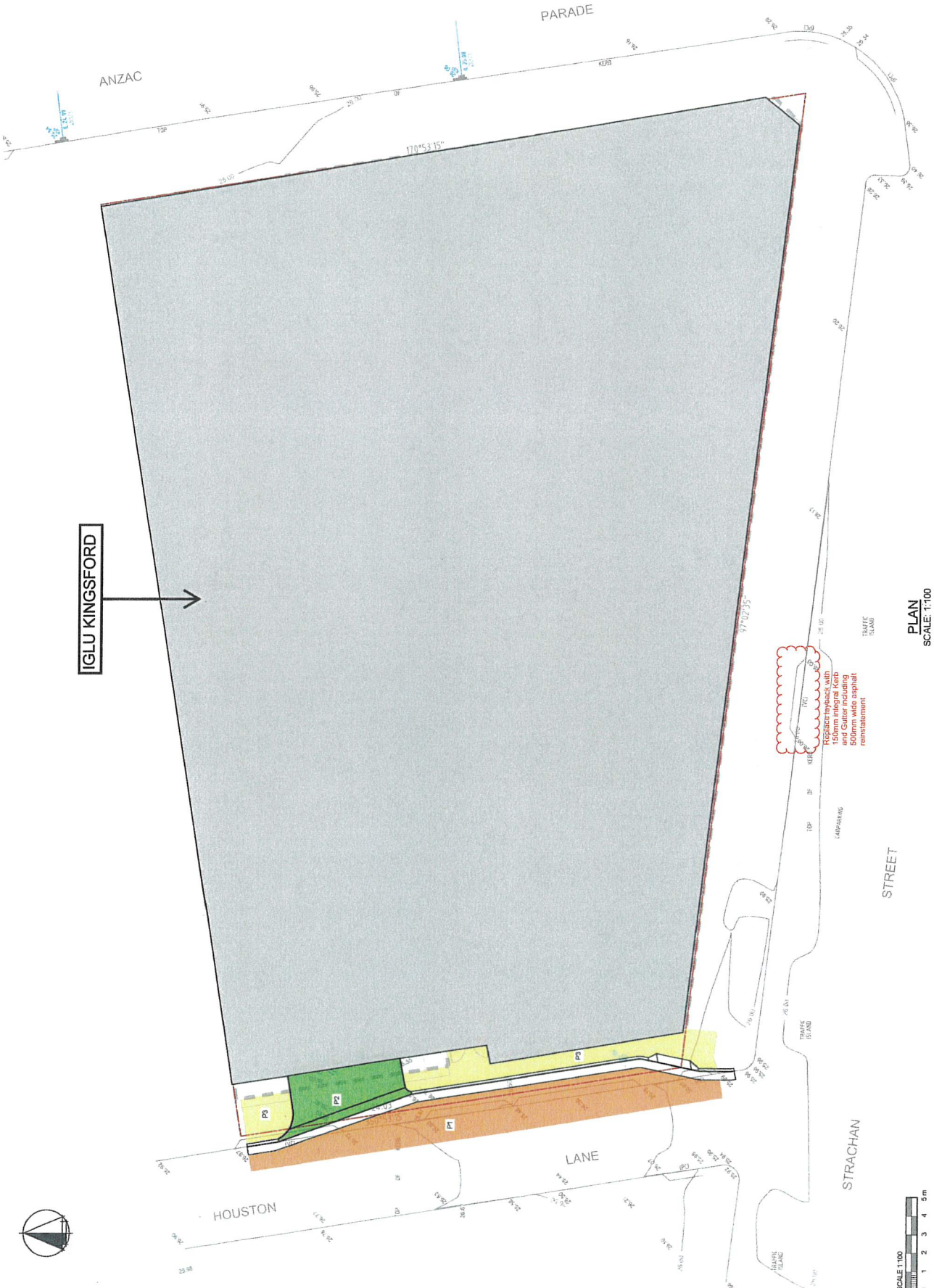
ARCADE

Annexure 3 – Laneway upgrades at Houston Lane



FOR TENDER		approved	01
order # (A)	when	drawn	rev
AS SHOWN	HAR	PAL	
required no.	6597	6597-CV-0404	

- LEGEND**
- SITE BOUNDARY
 - BUILDING LINE
 - PAVEMENT 1
ASPHALTIC CONCRETE
(AC10)
 - PAVEMENT 2
ASPHALTIC DRIVEWAY
(AC20/PA)
 - PAVEMENT 3
CONCRETE FOOTPATH
(FC20/PA)



NOT FOR CONSTRUCTION

FOR TENDER	
DATE	6597
PROJECT NO.	6597-CV-0601
REV	01

PAVEMENT PLAN	
---------------	--

IGLU KINGSFORD	
277-291 ANZAC PARADE KINGSFORD, NSW, 2032	

enstruct	
enstruct group pty ltd	
Level 4, 2 Glen Street	
Sydney NSW 2001	
Australia	
Telephone (02) 9504 1444	
Fax (02) 9504 1555	
www.enstruct.com.au	

iglu.	
-------	--

rev	date	description	dm	cm

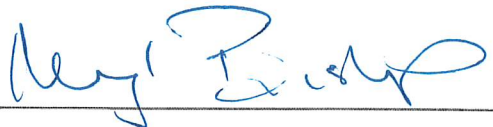
rev	date	description	dm	cm
01	20/04/2022	ISSUE FOR TENDER	PAL	
			HAR	

Execution page

Executed as a deed

Dated:

Signed, sealed and delivered by Randwick City Council by its General Manager in the presence of the witness whose signature appears below and in accordance with resolution dated



Witness (Signature)



Name of Witness (Print Name)



General Manager (Signature)



Name of General Manager (Print Name)

Signed, sealed and delivered by Iglu No. 215 Pty Ltd (ACN 653 910 064) as trustee for the Iglu Property Trust No. 215 in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors.



Director/Secretary (Signature)

Jonathan Gliksten

Name of Director/Secretary (Print Name)



Director (Signature)

Richard Anthony Smith

Name of Director (Print Name)