

Planning Agreement

31-41 Anzac Parade, Kensington

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

3141 APK Pty Ltd (ABN 14 618 879 637) (**Developer**)

Prepared by:

Marsdens Law Group

Level 1
49 Dumaesq Street
CAMPBELLTOWN NSW 2560

Tel: (02) 4626 5077

Fax: (02) 4626 4826

DX: 5107 Campbelltown

Ref: 44 1679



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Planning Agreement

31-41 Anzac Parade, Kensington

Parties

Council	Name	Randwick City Council
	Address	30 Frances Street Randwick NSW 2031
	ABN	77 362 844 121
Developer	Name	3141 APK Pty Ltd
	Address	Level 4, 1 James Place North Sydney NSW 2060
	ABN	14 618 879 637

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 Development Consent is subject to the following deferred commencement conditions:

This consent shall not operate until:

A1. The owner of the land has executed a Voluntary Planning Agreement (VPA) in accordance with the Applicant's offer contained in the letter from Colin Biggers & Paisley to Randwick City Council dated 22 February 2022.

A2. Upon execution, the applicant shall register the VPA on the title to the land.

- E** 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 section 7.4 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 is granted.

4 Application of s7.11 and s7.12

4.1 Application

This document does not exclude 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.
- (3) 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) by the greater of:

- (a) the amount determined in accordance with the indexation formula at clause 5.4;
and
- (b) 2.5%.

5.2 CIC Monetary Contribution

- (1) Subject to 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.

5.3 CIC Works

- (1) If the Developer elects to undertake the CIC Works, the Developer must within a reasonable time lodge an application under the *Roads Act 1993* and complete those CIC Works in accordance with this document and in particular Schedule 5.
- (2) The Developer acknowledges and agrees that if the parties are not able to agree on the detailed design of the CIC Works in accordance with clause 5.6, or if the Developer forms the view prior to commencing the CIC Works that the Developer cannot carry out the CIC Works at a reasonable cost, or if the Developer does not within a reasonable timeframe receive an approval under the *Roads Act 1993* to carry out the CIC Works after an application for such an approval is lodged, then the Developer may serve written notice on Council advising that it will no longer undertake the CIC Works.
- (3) Upon either event referred to in paragraph (2) occurring, the provisions of paragraphs (4) to (6) below have no effect and the Developer:
 - (a) is under no obligation to undertake the CIC Works; and
 - (b) is required to pay the full amount of the CIC Monetary Contributions under clause 5.2.
- (4) 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).
- (5) The parties agree that the report provided by the Quantity Surveyor under paragraph (4) is final and binding on the parties, subject to any manifest error.
- (6) Upon Completion of the CIC Works, the amount of the CIC Monetary Contribution required to be paid by the Developer under this document is reduced by the CIC Works Value.

5.4 Indexation of Amounts payable by Developer

Subject to clause 5.1(3), each Contribution Value 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:

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

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.

5.5 Conduct of CIC Works

The Developer, at its cost, must:

- (1) obtain any other form of consent required by a relevant Authority, for the construction and use of the CIC Works;
- (2) carry out and complete the CIC Works to the satisfaction of the Council by the time specified in Schedule 5; and
- (3) carry out and complete the CIC Works:
 - (a) in accordance with the specifications (if any) referred to in Schedule 5 for the relevant item of CIC Work or the design and specifications agreed or determined to apply to an item of CIC Work under clause 5.6;
 - (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 CIC Works; and
 - (f) in a proper and workmanlike manner complying with current industry practice and standards relating to each aspect of the CIC Works.

5.6 Design and specification of CIC Works

- (1) The Developer must:
 - (a) consult with Council with respect to the development of the detailed design and specification with respect to each item of CIC Works, having regard to the plans referred to at **Schedule 5**; 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 commencing construction of an item of CIC Works, the Developer must submit to Council:
 - (a) for its approval, the detailed design and specification for that item of CIC Works; and
 - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the relevant item of CIC Work in accordance with the detailed design.
- (3) The design and specification for the item of CIC Works must be prepared by the Developer having specific regard to:

- (a) the specification for that item of CIC Works set out in column 3 of **Schedule 5**; and
 - (b) the value the relevant item of CIC Works, calculated in accordance with clause 5.6(2)(b).
- (4) Within thirty (30) days of the date of the first submission referred to in paragraph (3), Council will do either of the following:
 - (a) Notify the Developer in writing of its approval of the design and specification. Subject to clause 5.3(2), the Developer must then carry out and complete the item of CIC Works in accordance with that design and specification.
 - (b) Notify the Developer in writing that it does not approve of the design and specification and provide the Developer with reasons for this.
- (5) If Council notifies the Developer in writing that it does not approve of the design and specification, the Developer may:
 - (a) elect to amend the design and specification and submit to Council the amended design and specification in which case the approval process set out in this clause 5.6 applies to that amendment; or
 - (b) if the Developer does not agree with the modifications requested by Council, then, subject to clause 5.3, it may refer the relevant matter for dispute resolution in accordance with this document.

5.7 No credit or re-imbursements

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

5.8 Access to the land and location of CIC 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 any of the CIC 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 land upon which the CIC Works will be carried out is subject to any statutory approval or consent required, and also any applicable Council policy, to allow those CIC Works to be carried out;
 - (b) the Developer must obtain any such approvals or consents before commencing the CIC 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.

5.9 Designated Units

- (1) The Developer must dedicate the Designated Units to Council free of any trusts, estates, interests, covenants and Encumbrances by the time specified in Schedule 3.
- (2) The Developer must meet all costs (including legal and registration costs) associated with the dedication of the Designated Units in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (3) For the purpose of this document, the Designated Units are dedicated to Council:
 - (a) if the relevant allotments are dedicated in a plan registered at NSW Land Registry Services, when that plan is so registered; or

- (b) otherwise when the Developer delivers to Council:
 - (i) a transfer of the relevant allotments in registrable form;
 - (ii) any consent required by an interested party in the relevant allotments; and
 - (iii) any document in registrable form which, when registered, will remove any Encumbrances registered on the title of those allotments, excluding encumbrances that would not in the Council's opinion, acting reasonably, impede the intended use of all or any part of the Designated Units to be dedicated to the Council including but not limited to easements and covenants for services and drainage.

6 Completion of Works

6.1 Completion

For the purpose of this document an item of CIC Works is Completed when:

- (1) the CIC 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 relevant item of CIC Works which must be discharged prior to the Completion of that item of CIC Works in accordance with this document has been discharged.

6.2 Issue of Completion Notice

If the Developer considers that any particular item of CIC Works is complete it must serve a notice on Council which:

- (1) is in writing;
- (2) identifies the particular item of CIC Works to which it relates; and
- (3) specifies the date on which the Developer believes the relevant item of CIC Works was completed,

(Completion Notice).

6.3 Inspection by Council

- (1) Council must inspect the CIC 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 CIC Works referred to in the relevant Completion Notice will be deemed to be Complete and acceptable to Council.

6.4 Rectification Notice

- (1) Within twenty (20) business days of inspecting the CIC Works set out in a Completion Notice Council must provide notice in writing (Rectification Notice) to the Developer that the CIC 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 CIC 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 CIC Works.
- (2) If Council does not provide the Developer with a Rectification Notice in accordance with paragraph (1), the CIC 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 CIC 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 CIC Works in accordance with paragraph (3)(a), it must serve upon the Council a new Completion Notice for the CIC Works it has rectified.

6.5 Works-As-Executed-Plan

Prior to Completion of an item of CIC Work the Developer must provide to Council a full works-as-executed-plan in respect of the item of CIC Work.

6.6 Acceptance of Works

Council accepts ownership, possession and control of, and risk in, any CIC Works carried out in respect of the Designated Units when:

- (1) those CIC Works are Completed; and
- (2) the relevant units have been dedicated to Council.

7 Defects Liability

7.1 Defects Notice

- (1) Where any part of the CIC Works has been Completed but those CIC Works contain a material defect which:
 - (a) adversely affects the ordinary use and/or enjoyment of the relevant CIC 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 CIC 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 ten (10) 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 CIC 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 costs incurred by the Council in rectifying the Defects where Council may call upon the Security provided by the Developer pursuant to clause 11 and recover as a debt due in a court of competent jurisdiction any difference between the amount of the Security and the costs incurred by the Council in rectifying the Defects.

8 Variation of scope or timing for provision of Works

8.1 Variation to the scope of an item of Work

- (1) The Developer may request that Council approve in writing a variation to the scope of any item of CIC Work.
- (2) The scope of an item of CIC Work 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 an item of CIC Work at its absolute discretion.

8.2 Deferral of the timing of Completion of an item 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 any item of CIC Works by the time specified in **Schedule 5**; or
 - (b) it believes that there is a risk of damage to any item of the CIC Works if they are delivered by the time required in **Schedule 5**,

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

 - (c) identifying the relevant item of CIC Work that the Developer proposes to defer;
 - (d) specifying the reason for the request to defer the Completion of that item of the CIC Works; and
 - (e) identifying the anticipated time for Completion of the relevant item of CIC Work.
- (2) The Council, acting reasonably, must give the Developer a written notice within thirty (30) business 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 with respect to paragraph (2)(b), Council may require the relevant item of CIC Works to be completed before the issue of an Occupation Certificate with respect to the Development; and
- (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

Provided that Council provides full access to the area in which the CIC Works are to be carried out, the Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the CIC Works during the construction phase of the CIC Works, until such time as a Completion Notice is issued for that item of CIC 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 Contamination

10.1 Definitions

For the purpose of this clause 10:

Contamination means any material, gas, substance, liquid, chemical or biological mineral or other physical matter which would, if present on the Land:

- (1) result in an Authority issuing a notice, direction or order under an Environmental Law; or
- (2) which would constitute a violation of contribution of contravention of any Environmental Law.

Contaminated means subject to Contamination.

Environmental Law means all planning, environmental or pollution laws and any regulations, orders, directions, ordinances or requirements, permissions, permits, licences issued under those laws or instruments.

10.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Units are not, or will not be, Contaminated; and
- (2) indemnifies and must keep indemnified Council against all liability for and associated with all Contamination present in, on and under the Designated Units including full responsibility for compliance with and any liability in respect of such Contamination under the Contaminated Lands Management Act 1997 (NSW) and all other relevant legislation and the requirements of any relevant Authority.

10.3 Remediation

- (1) If Council becomes aware or reasonably suspects that any part of the Designated Units were Contaminated before the date of this document, Council may as soon as practicable notify the Developer in writing to that effect.
- (2) As soon as practicable after receipt of the notice pursuant to paragraph (1) the Developer will at its cost (with the assistance of qualified experts) carry out all reasonable investigations (including investigations which Council reasonably directs in writing) to enable the parties to be informed of the full nature and extent of the

Contamination in, on, under, and leaving from the relevant part of the land on which the Designated Units sit and provide copies of all reports on such investigations to Council (Investigation Reports).

- (3) As soon as practicable after receipt by Council of the Investigation Reports the parties must meet to discuss in good faith the method by which the relevant part of the Designated Units might be dealt with so that it is no longer Contaminated.
- (4) Following the discussions pursuant to paragraph (3) the Developer must at its own cost undertake all reasonable measures which the Developer (acting reasonably) determines (and as Council acting reasonably approves in writing) as necessary to ensure that the relevant part of the Designated Units are no longer Contaminated.

11 Security

11.1 Compulsory acquisition of the Designated Units

- (1) The Developer consents to the compulsory acquisition of the Designated Units:
 - (a) in accordance with the Acquisition Act; and
 - (b) on the terms set out in this clause 11.1.
- (2) Council may only acquire the Designated Units compulsorily in accordance with the Acquisition Act if the Developer has committed an Event of Default with respect the dedication of that land under this document.
- (3) If Council acquires the Designated Units compulsorily in accordance with the Acquisition Act:
 - (a) the Developer agrees that the compensation payable to it on account of that acquisition under the Acquisition Act is \$1.00; and
 - (b) Council must complete that acquisition within twelve (12) months of the relevant Event of Default.
- (4) The parties agree that the provisions of this clause 11.1 are an agreement with respect to the compulsory acquisition of the Designated Units for the purpose of s30 of the Acquisition Act.
- (5) If Council:
 - (a) acquires the Designated Units under paragraph (3); and
 - (b) is required to pay any compensation to a third party as a result of that acquisition,then the Developer must pay Council the amount of that compensation as a Monetary Contribution:
 - (c) within ten (10) business days of demand for payment being made by Council; and
 - (d) prior to the issue of the then next Occupation Certificate or Subdivision Certificate with respect to the Development.

11.2 Developer must not deal with property

- (1) The Developer must not grant a mortgage or charge over the Designated Units unless and until this document is registered on the title of the Land in accordance with clause 12.
- (2) The Developer must not during the term of this document sell, transfer, or grant a lease or license or any other right of occupancy to any person over the Designated Units without first obtaining Council's consent in writing.
- (3) Council may, at its absolute discretion, refuse its consent or give consent with conditions.

11.3 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.

12 Registration of this document

12.1 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 12.2, Council will undertake that registration at the cost of the Developer.

12.2 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 12.1.
- (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.

12.3 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 to Council's satisfaction; or
- (2) if this document is terminated or otherwise comes to an end for any other reason.

13 Assignment

13.1 Application

This clause 13 only applies during any period when this document is not registered on the title of the Land.

13.2 Restriction on Assignment

Other than in accordance with this clause 13 the Developer may not:

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

13.3 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.

14 Dispute Resolution

14.1 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**).

14.2 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.

14.3 Further steps required before proceedings

Subject to clauses 14.14 and 14.15 and except as otherwise expressly provided in this document, any Dispute must, as a condition precedent to the commencement of litigation, mediation under clause 14.5 or determination by an expert under clause 14.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within fourteen (14) business days of the date a notice under clause 14.1(2) is served.

14.4 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 14.5 or expert determination under clause 14.6.

14.5 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 14.6.

14.6 Choice of expert

- (1) If the Dispute is to be determined by expert determination, this clause 14.6 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 14.6 setting out the terms of the expert's determination and the fees payable to the expert.

14.7 Directions to expert

- (1) In reaching a determination in respect of a dispute under clause 14.6, 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.

14.8 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 14.6(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.

14.9 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.

14.10 Other courses of action

If the mediation referred to in clause 14.5 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.

14.11 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.

14.12 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.

14.13 Costs

- (1) Each party must contribute equally to the costs of any mediator appointed under clause 14.5.
- (2) If any independent expert does not award costs, each party must contribute equally to the expert's costs in making the determination.

14.14 Remedies available under the Act

This clause 14 does not operate to limit the availability of any remedies available to Council or the Developer under the Act.

14.15 Urgent relief

This clause 14 does not prevent a party from seeking urgent injunctive or declaratory relief concerning any matter arising out of this document.

15 Breach of this document

15.1 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.

15.2 Events of Default

- (1) The Developer commits an **Event of Default** if it:
 - (a) fails to comply with a Breach Notice; or
 - (b) becomes subject to an Insolvency Event.
 - (c) Consequences of Events of default
- (2) Where the Developer commits an Event of Default, Council may, in addition to any rights it has at Law:
 - (a) exercise the Step in Rights so as to carry out any work specified in the relevant Breach Notice; or
 - (b) call on the Security to the extent of any compensation claimed in a Breach Notice and not paid by the Developer.

16 Termination, Rescission or Determination

16.1 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 or is surrendered in accordance with the Act.

16.2 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.

16.3 Determination

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

17 Position of Council

17.1 Consent authority

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

17.2 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).

17.3 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 17 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.

17.4 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.

18 Confidentiality

18.1 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.

18.2 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.

19 GST

19.1 Defined GST Terms

Defined terms used in this clause 19 have the meaning ascribed to them in the GST Law.

19.2 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.

19.3 GST Obligations to Survive Termination

This clause 19 will continue to apply after expiration of termination of this document.

20 General

20.1 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.

20.2 Legal costs

The Developer agrees to:

- (1) reimburse the reasonable legal costs and disbursements of Council in the negotiation, preparation, execution, exhibition, registration and stamping of this document up to an amount of \$10,000; and
- (2) reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this document,

within seven (7) business days of receipt of a Tax Invoice from Council.

21 Administrative provisions

21.1 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.

21.2 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.

21.3 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.

21.4 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.

21.5 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.

21.6 Amendment

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

21.7 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.

21.8 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.

21.9 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.
-

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. (a) made, or proposes to make, a Development Application. (b) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this agreement applies – (Section 7.4(3)(a))	(1) C/442199. (2) D/442199. (3) A/106671. (4) B/106671. (5) 1/435561. (6) 2/435561.
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))	Applies
Applicability of section 7.12 of the Act – (Section 7.4(3)(d))	Applies.
Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))	Applies. See clause 4.
Mechanism for Dispute resolution – (Section 7.4(3)(f))	See clause 14.
Enforcement of this agreement (Section 7.4(3)(g))	See clause 11.
No obligation to grant consent or exercise functions – (Section 7.4(3)(9))	See clause 17.

Schedule 2 – Defined terms and Interpretation

Part 1 - Definitions

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Acquisition Act	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> .
Affordable Housing Levy Monetary Contribution	means the Contribution so described in Schedule 3 .
Assign	as the context requires refers to 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.
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 5 .
CIC Works Value	has the meaning ascribed in clause 5.3(4).
Claim	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.
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(d) of the Act.
Contributions	means the CIC Works, the Designated Units and the Monetary Contributions.
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 an item of Work, a period of twelve (12) months commencing on the date of Completion of the relevant item of Work.
Designated Units	means the units set out in Schedule 4 and on the plan attached as Annexure 2 .
Development	means the development permitted to be undertaken in accordance with the Development Consent, consisting of the demolition of the existing structures and construction of shop top housing consisting of 9 storeys, 3 storey basement car parking, 57 apartments, 2 commercial/retail tenancies at 31-41 Anzac Parade, Kensington.
Development Application	means an application for the Development Consent.
Development Consent	means the development consent issued for development application No DA/672/2019.
Dispute	has the meaning ascribed to it in clause 14.1.
Encumbrance	means an interest or power: (1) reserved in or over an interest in any asset; (2) arising under, or with respect to, a Bio-Banking Agreement; (3) created or otherwise arising in or over any interest in any asset under any mortgage, charge (whether fixed or floating), pledge, lien, hypothecation, title retention, conditional sale agreement, hire or hire purchase agreement, option, restriction as to transfer, use or possession, easement, covenant, lease, subordination to any right of any other person and any other encumbrance or security interest, trust or bill of sale; or (4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation. Encumber means to grant an Encumbrance.

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 <i>Local Government Act 1993</i> (NSW) and the <i>Roads Act 1993</i> (NSW).
Quantity Surveyor	means 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.

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 – Monetary Contributions

Item	Contributions	Timing	Contribution Value
1	Affordable Housing Levy Monetary Contribution	Prior to the issue of the first Occupation Certificate in respect of the Development.	\$19,062.20
2	CIC Monetary Contribution	Prior to the issue of the first Occupation Certificate in respect of the Development.	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>, the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019 and will be calculated (which includes for the sake of clarity any indexation required under the abovementioned Contributions Plans) 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) the area of additional residential floor space within the Development above the maximum building height plane allowable under clause 4.3 of the RLEP determined on the basis of the final design of the Development. As at the date of this document, the Contribution Value is estimated to be \$480,277.25 (being 1011.71 square metres of floor space payable at a rate of \$475/sqm).

Schedule 4 – Designated Units

Item	Affordable Housing Contribution	Time for Completion
1	Unit 107, being a one (1) bedroom unit of the Development comprising an internal area of no less than 60.0 sqm and balcony area of no less than 13.2 sqm as outlined in the plan attached as Annexure 2.	Prior to the issue of the first Occupation Certificate in respect of the Development.
2	Unit 105, being a two (2) bedroom unit of the Development comprising an internal area of no less than 78.0 sqm and balcony area of no less than 11.4 sqm as outlined in the plan attached as Annexure 2.	

Schedule 5 – CIC Works

Item of CIC Works	Specification	Application of specification and design approval (clause 5.6)
Landscape upgrades including Water Sensitive Urban Design along the site boundary of the Land.	Pursuant to item 6 of 'Appendix – Schedule of Community Infrastructure' in the <i>Kensington and Kingsford Town Centres – Community Infrastructure Contributions Plan</i> adopted by the Council on 10 December 2019. and in accordance with the Location Plan attached as Annexure 1 .	Yes

Annexure 1 – Location Plan

Drawing no. LA03, Revision D prepared by Taylor Brammer Landscape Architects dated 21 December 2021 approved under DA672/2019



New street trees to Council Street tree Master Plan



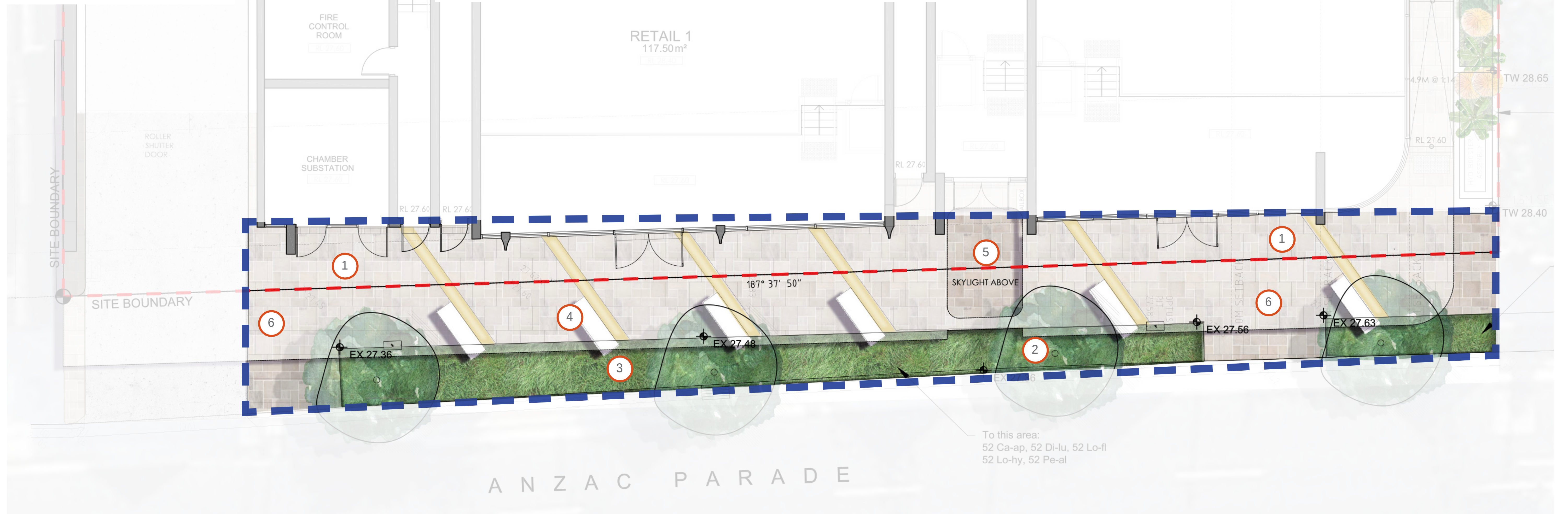
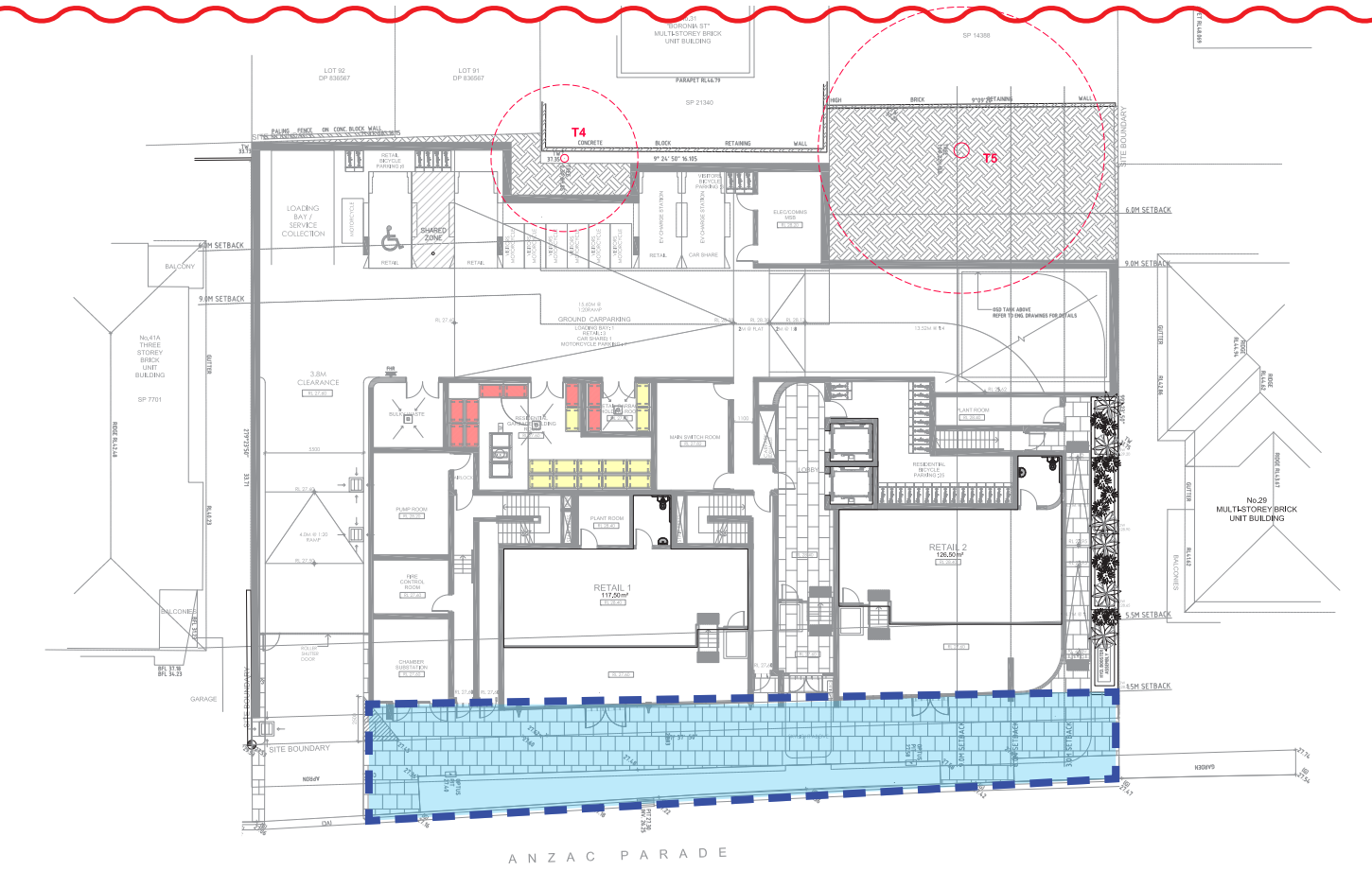
Vegetated swale promoting runoff filtration



Seating elements as outlined in Council Public Domain Strategy



Entry skylight with integrated artwork forming integral element of public art strategy



DESIGN NOTES

- | | | |
|--|--|--|
| 1 Upgrade public domain character and pedestrian walk way to Council requirements. | 3 WSUD principles to be incorporated | 5 Skylight over entry with integrated artwork to be developed in consultation with public art strategy |
| 2 Proposed new street trees to enhance street scape to Council Street tree Master Plan | 4 Concrete seating elements to be provided in accordance with Council Public Domain strategy | 6 Awning over to Architect's details |

Schedule of Changes

Public Domain Plan not included in previous submission

Public Domain Plan

Project: 31-41 Anzac Parade, Kensington
Project No: 17-125s
Client: 3141 APK PTY LTD

Drawing No: LA03
Revision: D
Date: 21.12.2021

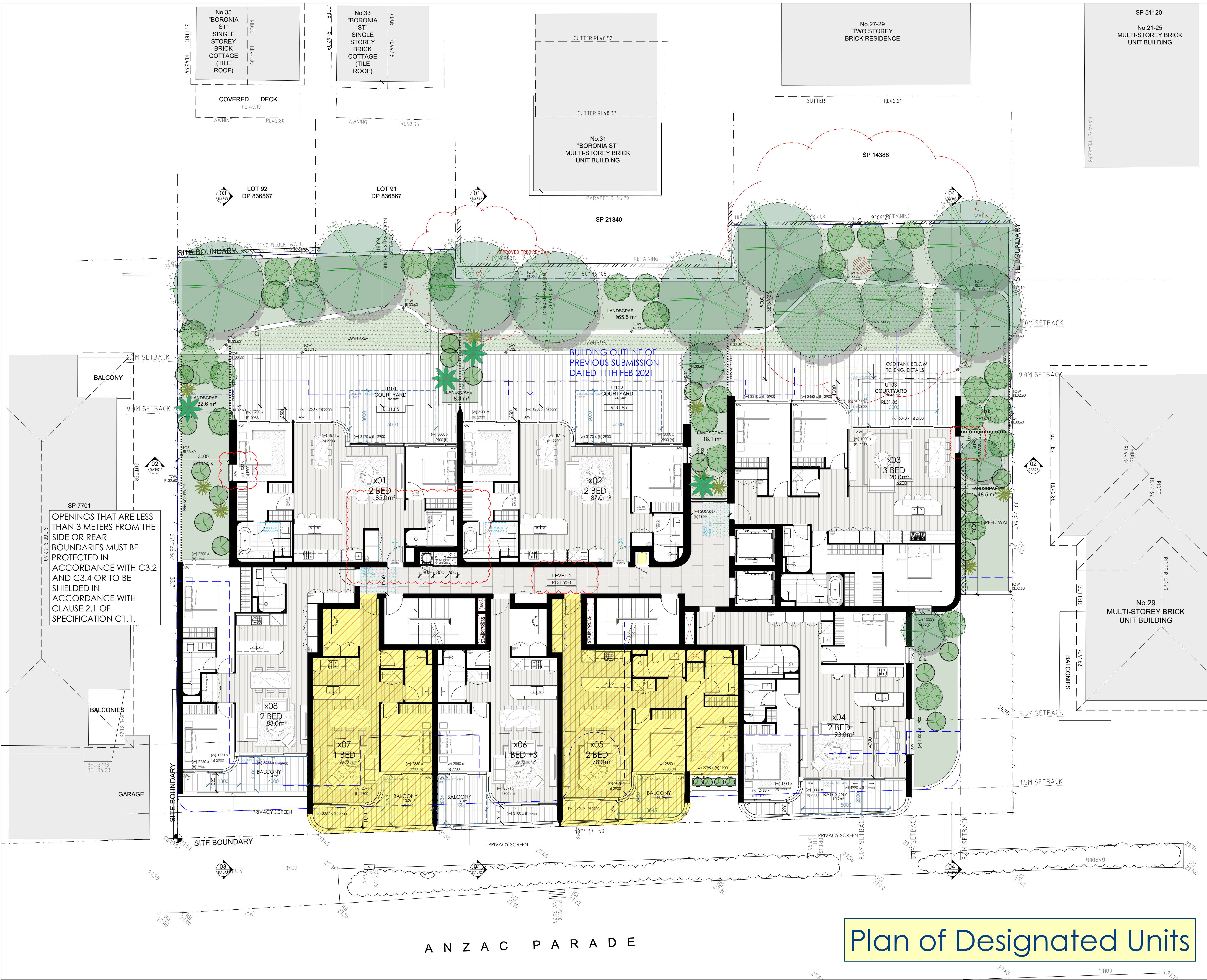
Scale: 1:75 @ A1

TaylorBrammer



Taylor Brammer Landscape Architects Pty Ltd
218 Oxford Street Woollahra NSW 2025
Tel: +61 2 9387 8855 Email: sydney@taylorbrammer.com.au

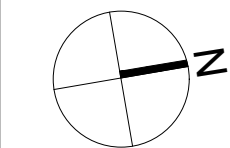
Annexure 2 – Plan of Designated Units



- GENERAL NOTES:**
- ALL WORKS TO COMPLY WITH BUILDING CODE OF AUSTRALIA, REQUIREMENTS OF RELEVANT STATUTORY AUTHORITIES/ LOCAL GOVERNMENT & RELEVANT AUSTRALIAN BUILDING STANDARDS.
 - DRAWINGS FOR THE PURPOSES OF DA ONLY - FURTHER CONSULTANT / AUTHORITY COORDINATION WILL BE REQUIRED AT CC STAGE WHICH MAY IMPACT ON DESIGN AND PLANNING LAYOUTS.
 - ARCHITECTURAL PLANS TO BE READ IN CONJUNCTION WITH CONSULTANT'S DRAWINGS, SPECIFICATIONS & REPORTS.
 - COPYRIGHT OF DESIGN SHOWN HEREON IS RETAINED BY PBD ARCHITECTS AND AUTHORITY IS REQUIRED FOR ANY REPRODUCTION.
 - AREA SCHEDULES SUPPLIED ARE APPROXIMATE ONLY - FUTURE ALLOWANCE FOR VERTICAL SERVICE DUCTS, STRUCTURAL WALL SYSTEMS AND CONSULTANT INPUT WILL BE REQUIRED.
- LEGEND:**
- AW AWNING
 - HW HIGHLIGHT WINDOW
 - CU A/C CONDENSER UNITS
 - PH FIRE HYDRANT
 - FHR FIRE HOSE REEL
 - FS FIRE STAIRS
 - MV MECHANICAL RISER TO FUTURE DETAIL
 - GC GARBAGE CHUTE
 - NB MAILBOX TO FUTURE DETAIL
 - PB PLANTERBOX
 - R 240L RECYCLING BIN
 - SK SKYLIGHT
 - ST STORAGE
 - WT HOT WATER UNITS

General Amendments to reflect changes
Refer to Schedule of amendments

L	17.01.2022	RESPONSE TO COUNCIL COMMENTS
K	17.12.2021	RESPONSE TO S34 COMMENTS
J	26.11.2021	FOR SUBMISSION
H	17.11.2021	CONSULTANT COORDINATION
G	08.11.2021	DESIGN DEVELOPMENT
F	25.10.2021	FOR REVIEW
E	21.05.2021	FOR REVIEW
A	27.11.2019	DA LODGEMENT
ISSUE	DATE	DESCRIPTION



CLIENT:
3141 APK PTY LTD

ARCHITECT:
PBD | ARCHITECTS
ABN 36 147 035 550
P - 02 9698 8140 E - info@pbdarchitects.com.au W - www.pbdarchitects.com.au
Level 2, 52 Albion Street, Surry Hills NSW 2010
Nominated Architect: Paul Buljevic NSW 7768

PROJECT:
PROPOSED SHOPTOP HOUSING
31-41 ANZAC PARADE, KENSINGTON
NSW 2033

DATE: APRIL 2017
DRAWING TITLE:
LEVEL 1 PLAN

DRAWN BY: KC/WT	CHECKED BY: PB	ISSUE: L
SCALE: 1:100@A1 / 1:200@A3	DRAWING NO: DA104	
PROJECT NO: 1723		

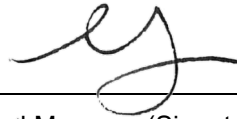
Plan of Designated Units

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)

Acting General Manager (Signature)

Kerry Kyriacou

Name of Witness (Print Name)

Name of General Manager (Print Name)

Signed, sealed and delivered by **3141 APK Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.

Director/Secretary (Signature)

Director (Signature)

Name of Director/Secretary (Print Name)

Name of Director (Print Name)