

# Planning Agreement

## 137-151 Anzac Parade, Kensington

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

Toga Addison Pty Ltd (ABN 49 609 273 092) in its own capacity and as trustee for Toga Addison Unit Trust (ABN 56 742 581 520) (**Developer**)

Prepared by:

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# Planning Agreement

## 137-151 Anzac Parade, Kensington

### Parties

<b>Council</b>	<b>Name</b>	Randwick City Council
	<b>Address</b>	30 Frances Street Randwick NSW 2031
	<b>ABN</b>	77 362 844 121
<b>Developer</b>	<b>Name</b>	Toga Addison Pty Ltd (ABN 49 609 273 092) in its own capacity and as trustee for Toga Addison Unit Trust
	<b>Address</b>	Level 5, 45 Jones Street Ultimo NSW 2007
	<b>ABN</b>	56 742 581 520

### 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**

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#### **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 is granted.

### **4 Application of s7.11 and s7.12**

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#### **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**

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#### **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 parties acknowledge and agree that the Developer must only pay the Affordable Housing Levy Monetary Contribution to Council for any shortfall in the total floor area of the Designated Land to be dedicated to Council pursuant to this document.

## 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 Complete those CIC Works in accordance with this document and in particular **Schedule 5**.
- (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 5.6 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, specification or cost to complete 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, 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:
  - (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 any difference between the CIC Monetary Contribution and the CIC Works Value.

#### 5.4 Indexation of Amounts payable by Developer

Unless otherwise specified in this document, 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.

For the avoidance of doubt, the indexation method set out in this clause 5.4 does not apply to the Affordable Housing Levy Monetary Contributions.

#### 5.5 Conduct of CIC Works

The Developer, at its cost, must:

- (1) obtain any required consent 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 CIC Works or the design and specifications agreed or determined to apply to the CIC Works 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 the CIC Works and the estimate of the cost to complete the CIC 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 commencing construction of the CIC Works, the Developer must submit to Council:
  - (a) for its approval, the detailed design and specification for the CIC Works; and
  - (b) a report from a suitable qualified and experienced Quantity Surveyor which estimates the cost to complete the CIC Works in accordance with the detailed design.
- (3) The design and specification for the CIC Works must be prepared by the Developer having specific regard to:
  - (a) the specification for the CIC Works set out in column 3 of **Schedule 5**; and
  - (b) the value the 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, specification and the estimate of the cost to complete the CIC Works. The Developer is then to carry out and complete the CIC Works in accordance with that design, specification and the estimate of the cost to complete the CIC Works.
  - (b) Notify the Developer in writing that it does not approve of the design ,specification and/or the estimate of the cost to complete the CIC Works and provide the Developer with reasons for this.
- (5) If Council notifies the Developer in writing that it does not approve of the design, specification and cost to complete the CIC Works, the Developer may:
  - (a) elect to amend the design, specification and the estimate of the cost to complete the CIC Works 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-imburements

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 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) Council must permit the Developer, its officers, employees, agents and contractors to enter any Council owned land upon which the CIC Works will be carried out, at any time upon giving reasonable prior notice, in order to carry out the CIC Works.
- (4) The Developer acknowledges and agrees that:
  - (a) access to any Council owned 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 Land

- (1) The Developer must dedicate the Designated Land to Council free of any trusts, estates, interests, covenants and Encumbrances in accordance with **Schedule 4**.
- (2) Details of the Designated Land are to be submitted to Council for approval prior to the issue of any Occupation Certificate for the Development.
- (3) With the exception of any stamp duty associated with the dedication of the Designated Land (which will be at the cost of Council), the Developer must meet all costs (including legal and registration costs) associated with the dedication of the Designated Land in accordance with paragraph (1), including any costs incurred by Council in relation to that dedication.
- (4) For the purposes of this document, the Designated Land is 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 Land to be dedicated to the Council including but not limited to easements and covenants for services and drainage and encumbrances with respect to common property of the Development.

## **6 Completion of Works**

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### **6.1 Completion**

For the purpose of this document the CIC Works are 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 CIC Works which must be discharged prior to the Completion of the CIC Works in accordance with this document has been discharged.

### **6.2 Issue of Completion Notice**

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

- (1) is in writing;
- (2) identifies the CIC Works; and
- (3) specifies the date on which the Developer believes the CIC Works were 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 the CIC Works the Developer must provide to Council a full works-as-executed-plan in respect to the CIC Works.

## 6.6 Acceptance of Works

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

## 7 Defects Liability

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### 7.1 Defects Notice

- (1) Where any part of the CIC Works have 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 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 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 Defects 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 Defects Security and the costs incurred by the Council in rectifying the Defects.

# 8 Variation of scope or timing for provision of the CIC Works

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## 8.1 Variation to the scope of the CIC Work

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

## 8.2 Deferral of the timing of Completion of the CIC 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 CIC Works by the time specified in **Schedule 5**; or
  - (b) it believes that there is a risk of damage to 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 CIC Works by providing written notice to the Council:

- (c) identifying the CIC Works that the Developer proposes to defer;
  - (d) specifying the reason for the request to defer the Completion of the CIC Works; and
  - (e) identifying the anticipated time for Completion of the CIC Works.
- (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 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 fifty per cent (150%) of the then estimated cost to complete the CIC 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 Contamination**

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### **9.1 Definitions**

For the purpose of this clause 9:

**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.

## 9.2 Warranties and Indemnities

The Developer:

- (1) warrants that as far as it is aware, and other than as disclosed to Council, the Designated Land is 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 Land 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.

## 9.3 Remediation

- (1) If Council becomes aware or reasonably suspects that any part of the Designated Land was 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 Land sits 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 Land 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 Land is no longer Contaminated.

## 10 Developer Warranties and Indemnities

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### 10.1 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.

### 10.2 Indemnity

The Developer indemnifies Council in respect of any Claim that may arise as a result of the conduct of the CIC Works until such time as a Completion Notice is issued for the 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.

## 11 Security

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### 11.1 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 for an item of CIC Works, for an amount equivalent to one hundred and ten per cent (110%) of the Contribution Value for that item of CIC Works (**Works Securities**); and
  - (b) prior to the Completion of an item of CIC Works, for an amount equivalent to ten per cent (10%) of the Contribution Value of that item of CIC 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 CIC Works then no Security will be payable.

### 11.2 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.

### 11.3 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.

### 11.4 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.

### 11.5 Release of Works Security

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 Security within ten (10) business days of such a request being made.

#### **11.6 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.

#### **11.7 Compulsory acquisition of the Designated Land**

- (1) The Developer consents to the compulsory acquisition of the Designated Land:
  - (a) in accordance with the Acquisition Act; and
  - (b) on the terms set out in this clause 11.6.
- (2) Council may only acquire the Designated Land 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 Land 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 11.6 are an agreement with respect to the compulsory acquisition of the Designated Land for the purpose of s30 of the Acquisition Act.
- (5) If Council:
  - (a) acquires the Designated Land 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.

### **11.8 Developer must not deal with property**

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

### **11.9 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.

## **12 Registration of this document**

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### **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

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### 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

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### 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 five (5) 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 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**

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#### **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**

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.

#### **15.3 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.

### **16 Termination, Rescission or Determination**

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#### **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.

## **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**

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### **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

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### 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

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### 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, provided that the party has received a valid tax invoice for that Taxable Supply.

- (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**

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### **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) pay or reimburse the reasonable legal costs and disbursements of Council in the negotiation, preparation, execution, exhibition, registration and stamping of this document; and
- (2) pay or 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**

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### **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*.

## 21.10 Trustee Limitation of Liability

- (1) The Developer enters into the document only in its capacity as trustee of the Unit Trust and in no other capacity.
  - (2) A liability arising under or in connection with the document (whether that liability arises under a specific provision of the document, for breach of contract or otherwise) can be enforced against the Developer only to the extent to which it can be satisfied out of the assets of the Unit Trust out of which the Developer is actually indemnified for the liability.
  - (3) The limitation of the Developer's liability under this document:
    - (a) applies despite any other provision of the document (other than paragraph (5) below); and
    - (b) extends to all liabilities and obligations of the Developer in relation to any representation, warranty, conduct, omission, agreement or transaction related to the document.
  - (4) The parties may not:
    - (a) seek the appointment of a liquidator, administrator, receiver or similar person to the Developer; or
    - (b) prove in any liquidation, administration or arrangement of or affecting the Developer.
  - (5) The provisions of this clause 21.10 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 Unit Trust, as a result of the Developer's fraud, negligence or breach of trust.
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**Schedule 1– Requirements under s7.4**

<b>REQUIREMENT UNDER THE ACT</b>	<b>THIS PLANNING AGREEMENT</b>
<p><b>Planning instrument and/or development application – (Section 7.4(1))</b></p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
<p><b>Description of land to which this agreement applies – (Section 7.4(3)(a))</b></p>	<p>(1) 10/3/3897.</p> <p>(2) 1/554563.</p> <p>(3) 2/554563.</p> <p>(4) B/340818.</p> <p>(5) C/100646.</p> <p>(6) D/100646.</p> <p>(7) 10/828868.</p> <p>(8) 1/573636.</p>
<p><b>Description of change to the environmental planning instrument to which this agreement applies – (Section 7.4(3)(b))</b></p>	Not applicable
<p><b>Application of section 7.11 of the Act – (Section 7.4(3)(d))</b></p>	Applies
<p><b>Applicability of section 7.12 of the Act – (Section 7.4(3)(d))</b></p>	Applies.
<p><b>Consideration of benefits under this agreement if section 7.11 applies – (Section 7.4(3)(e))</b></p>	Applies. See clause 4.
<p><b>Mechanism for Dispute resolution – (Section 7.4(3)(f))</b></p>	See clause 14.
<p><b>Enforcement of this agreement (Section 7.4(3)(g))</b></p>	See clause 11.
<p><b>No obligation to grant consent or exercise functions – (Section 7.4(3)(9))</b></p>	See clause 17.

## Schedule 2 – Defined terms and Interpretation

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### Part 1 - Definitions

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<b>Act</b>	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
<b>Acquisition Act</b>	means the <i>Land Acquisition (Just Terms Compensation) Act 1991</i> (NSW).
<b>Affordable Housing Contribution</b>	means the Contribution so described in <b>Schedule 3</b> .
<b>Affordable Housing Policy</b>	means the <i>Randwick Local Environmental Plan 2012, the Kensington and Kingsford Town Centres - Affordable Housing Plan</i> adopted by the Council on 10 December 2019.
<b>Assign</b>	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.
<b>Authority</b>	means (as appropriate) any: <ol style="list-style-type: none"> <li>(1) federal, state or local government;</li> <li>(2) department of any federal, state or local government;</li> <li>(3) any court or administrative tribunal; or</li> <li>(4) statutory corporation or regulatory body.</li> </ol>
<b>Bank Guarantee</b>	means an irrevocable and unconditional undertaking without any expiry or end date by one of the following trading banks: <ol style="list-style-type: none"> <li>(1) Australia and New Zealand Banking Group Limited.</li> <li>(2) Commonwealth Bank of Australia.</li> <li>(3) Macquarie Bank.</li> <li>(4) National Australia Bank Limited.</li> <li>(5) St George Bank Limited.</li> <li>(6) Westpac Banking Corporation.</li> <li>(7) Any other financial institution approved by the Council, in its absolute discretion, in response to a request from the Developer.</li> </ol>
<b>Business Day</b>	means a day which is not a Saturday, Sunday or a public holiday in New South Wales.
<b>CIC Monetary Contribution</b>	means the Contribution so described in <b>Schedule 3</b> .
<b>CIC Works</b>	means the Contribution so described in <b>Schedule 5</b> .
<b>CIC Works Value</b>	has the meaning ascribed in clause 5.3(4).
<b>Claim</b>	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.
<b>Completed</b>	means completed in accordance with the requirements of this document.
<b>Completion Notice</b>	has the meaning ascribed in clause 6.2.
<b>Confidential Information</b>	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: <ul style="list-style-type: none"> <li>(1) is by its nature confidential;</li> <li>(2) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);</li> <li>(3) any party knows or ought to know is confidential;</li> <li>(4) is information which may be reasonably considered to be of a confidential nature.</li> </ul>
<b>Construction Certificate</b>	has the same meaning as in section 6.4(d) of the Act.
<b>Contributions</b>	means the CIC Works, the Designated Land and the Monetary Contributions.
<b>Contribution Value</b>	means the amount specified in <b>Schedules 3</b> and <b>Schedule 4</b> in the column headed "contribution value" for each item of the Contributions as indexed in accordance with this document.
<b>Defect</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Notice</b>	has the meaning ascribed to it in clause 7.1.
<b>Defects Liability Period</b>	means with respect to the CIC Works, a period of twelve (12) months commencing on the date of Completion of the CIC Works.
<b>Defects Security</b>	has the meaning ascribed to it in clause 11.1(1)(b).
<b>Designated Land</b>	means the land to be dedicated to Council for any affordable housing contribution as referred to in <b>Schedule 4</b> .
<b>Development</b>	means the development permitted to be undertaken in accordance with the Development Consent, consisting of the demolition of existing structures, site remediation, and construction of a nine (9) storey mixed use development comprising ground floor commercial/retail premises and one-hundred and forty-two (142) dwellings on floors above, two (2) levels of basement parking with vehicular access from Anzac Parade, tree removal, associated landscape and public domain works (variation to building height) at 137-151 Anzac Parade, Kensington.
<b>Development Application</b>	means an application for the Development Consent.

<b>Development Consent</b>	means the development consent issued for development application number DA/810/2021.
<b>Dispute</b>	has the meaning ascribed to it in clause 14.1.
<b>Encumbrance</b>	means an interest or power: <ul style="list-style-type: none"> <li>(1) reserved in or over an interest in any asset;</li> <li>(2) arising under, or with respect to, a Bio-Banking Agreement;</li> <li>(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</li> <li>(4) by way of security for the payment of a debt or other monetary obligation or the performance of any obligation.</li> </ul> <p><b>Encumber</b> means to grant an Encumbrance.</p>
<b>GST Law</b>	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
<b>Index</b>	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.
<b>Insolvency Event</b>	means the happening of any of the following events: <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(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.</li> <li>(5) A body corporate is or states that it is insolvent.</li> <li>(6) As a result of the operation of section 459F(1) of the <i>Corporations Act 2001</i> (Cth) (<b>Corporations Act</b>), a</li> </ul>

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).

**Qualified Valuer**

means approved by the Council who:

- (1) is a member of the Australian Valuers Institute and has been a member for at least five (5) years;
- (2) practises as a valuer of real property;
- (3) is active as a valuer of real property at the time of their appointment;
- (4) has at least three (3) years experience in valuing real property; and
- (5) undertakes to act fairly and promptly in accordance with the requirements of this document.

**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.

<b>Rectification Notice</b>	has the meaning ascribed to it in clause 6.4.
<b>Security</b>	has the meaning ascribed to it in clause 11.1(1).
<b>Unit Trust</b>	means the Toga Addison Unit Trust (ABN 56 742 581 520).
<b>Works Securities</b>	has the meaning ascribed to it in clause 11.1(1)(a).

**Part 2 - Interpretational Rules**

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<b>clauses, annexures and schedules</b>	a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this document.
<b>reference to statutes</b>	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.
<b>singular includes plural</b>	the singular includes the plural and vice versa.
<b>Person</b>	the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association or any government agency.
<b>executors, administrators, successors</b>	a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
<b>Dollars</b>	Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia.
<b>calculation of time</b>	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.
<b>reference to a day</b>	a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
<b>accounting terms</b>	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.
<b>reference to a group of persons</b>	a group of persons or things is a reference to any two or more of them jointly and to each of them individually.

<b>meaning not limited</b>	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.
<b>next day</b>	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.
<b>next business day</b>	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.
<b>time of day</b>	time is a reference to Sydney time.
<b>Headings</b>	headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this document.
<b>Agreement</b>	a reference to any agreement, document or instrument includes the same as varied, supplemented, novated or replaced from time to time.
<b>Gender</b>	a reference to one gender extends and applies to the other and neuter gender.

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### Schedule 3 – Monetary Contributions

Contributions	Timing	Contribution Value
Affordable Housing Levy Monetary Contribution	Prior to the issue of the first Occupation Certificate in respect of the Development.	<p>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 Affordable Housing Policy and will be calculated using the relevant indexed Affordable Housing Contribution Rate pursuant to part 2.8 of the Affordable Housing Policy (being an amount of \$540.62 per square metre as at the date of this document).</p> <p>The amount of the contribution will be calculated using the following formula:</p> $MC = AHC - AFHDL$ <p>where:</p> <p>MC = the monetary contribution required to be paid.</p> <p>AHC = the Affordable Housing Contribution Rate referred to above multiplied by the <i>total floor area</i> of the Development (as defined in section 2.5 of the Affordable Housing Policy).</p> <p>AFHDL = the Affordable Housing Contribution Rate referred to above, minus the total floor area of the Designated Land.</p>
CIC Monetary Contribution	Prior to the issue of the fourth Construction Certificate in respect of the Development.	<p>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 clause 5.4 of this document) using:</p> <ol style="list-style-type: none"> <li>(1) the relevant Community Infrastructure Contribution Rate (being an amount of \$475.00 per square metre as at the date of this document); and</li> <li>(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.</li> </ol>

		<b>As at the date of this document, the Contribution Value is estimated to be \$1,433,464.50 (being approximately 3,017.82 square metres of floor space payable at a rate of \$475/sqm).</b>
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## Schedule 4 – Designated Land

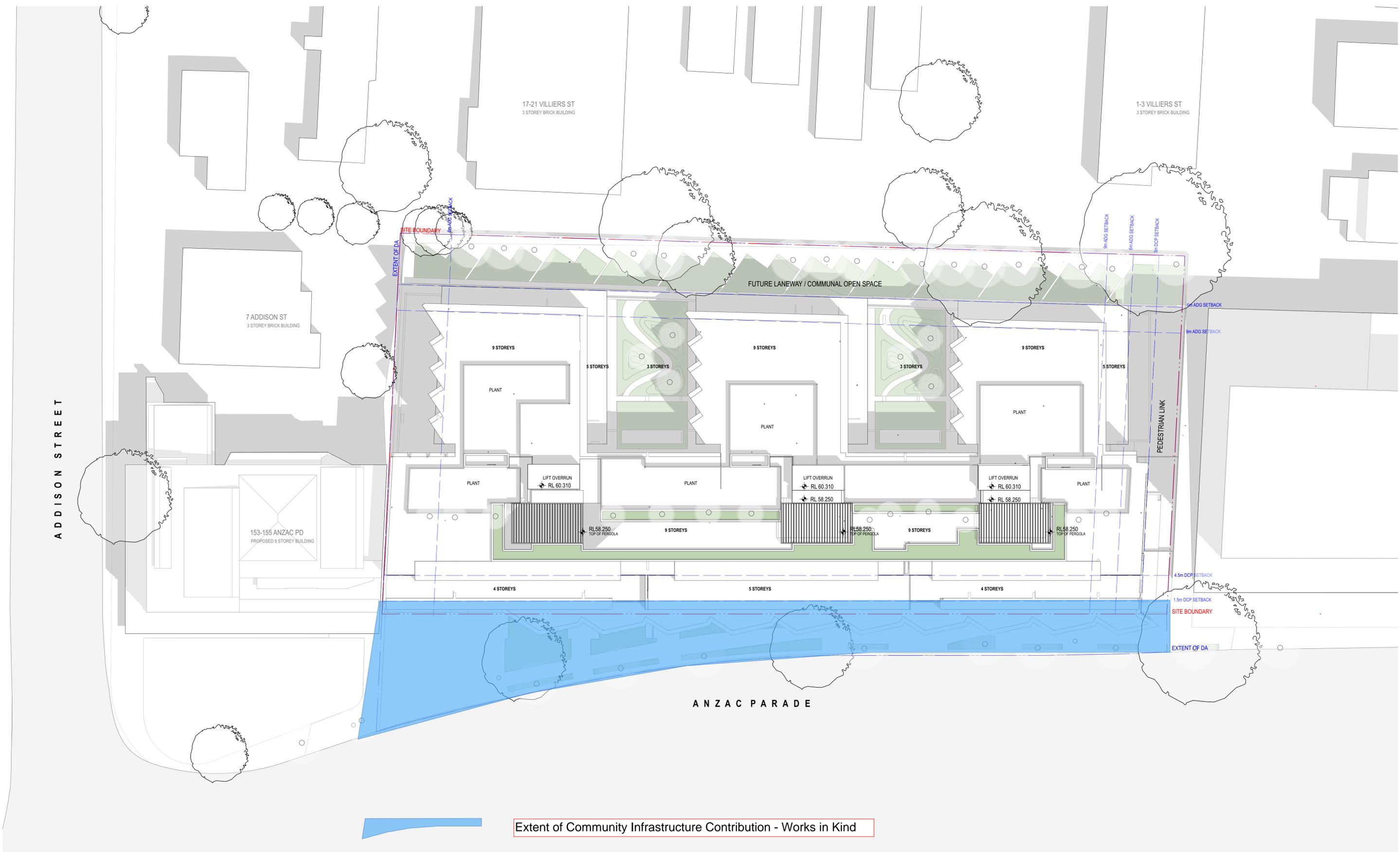
Affordable Housing Contribution	Timing
<p>The dedication of one (1) bedroom, two (2) bedroom or three (3) bedroom dwellings comprising an internal area of no less than 50.0 sqm within the Development with an aggregate floor area of up to three percent (3%) of the <i>total floor area</i> of the Development (as defined in section 2.5 of the Affordable Housing Policy and as required by clause 6.18 of the Randwick LEP 2012) and minimum ancillary car parking permitted by Council for the dwellings with the nature and extent of such dwellings to be determined by the Developer and approved by Council and generally in accordance with the finishes in the Kensington Finishes Schedule attached as <b>Annexure 3</b>.</p> <p>As at the date of this document, the anticipated maximum area required to be dedicated is 528sqm, being three per cent (3%) of the anticipated total floor area of 17,609 sqm, as outlined in the plan attached as <b>Annexure 2</b>.</p> <p>For the avoidance of doubt, the affordable housing floor area (which is a percentage of the total floor area) is not calculated by reference to net saleable area of the affordable housing dwellings and is instead a proportion of the total floor area. As an example, the anticipated maximum area of 528sqm is a proportion of the total floor area and not calculated by reference to net saleable area of the dwellings.</p>	<p>Prior to the issue of the first Occupation Certificate in respect of the Development.</p>

## Schedule 5 – CIC Works

CIC Works	Timing	Specification
Landscape upgrades including Water Sensitive Urban Design (including but not limited to) Anzac Parade frontage as generally shown on the Location Plan.	Prior to the issue of the fourth Construction Certificate in respect of the Development.	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 determined in accordance with clause 5.6.

## **Annexure 1 – Location Plan**

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Extent of Community Infrastructure Contribution - Works in Kind

**NOTES**  
 THIS DRAWING IS COPYRIGHT © OF TURNER. NO REPRODUCTION WITHOUT PERMISSION. UNLESS NOTED OTHERWISE THIS DRAWING IS NOT FOR CONSTRUCTION. ALL DIMENSIONS AND LEVELS ARE TO BE CHECKED ON SITE PRIOR TO THE COMMENCEMENT OF WORK. INFORM TURNER OF ANY DISCREPANCIES FOR CLARIFICATION BEFORE PROCEEDING WITH WORK. DRAWINGS ARE NOT TO BE SCALED. USE ONLY DIMENSIONS AND LEVELS NOTED ON DRAWING. REFER TO CONSULTANT DOCUMENTATION FOR FURTHER INFORMATION. IFC AND BIM FILES ARE UNCONTROLLED DOCUMENTS AND ARE ISSUED FOR INFORMATION ONLY.

**CLIENT**  
**Toga Addison Pty Ltd**  
 Level 5, 45 Jones Street, Ultimo NSW  
 2007, Australia

**Project Title**  
**137 Anzac Parade**  
 137-151 Anzac Parade KENSINGTON NSW 2033 AUSTRALIA

**Drawing Title**  
**Siteworks**  
**Site Plan**

Rev	Date	Approved by	Revision Notes
P01	16/12/21	SM	Issued for DA Submission
P02	28/04/22	SM	Update for DA Submission

**Scale**  
 1:200 @A1, 50% @A3

**Project No.** 21076  
**Drawn by** TURNER  
**Rev** P02

**For DA Submission**

## **Annexure 2 – Not used**

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## **Annexure 3 – Kensington Finishes Schedule**

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**KITCHEN****SAND / OCEAN SCHEME**

Kitchen benchtop .....	Stone
Joinery .....	Poly laminate
Joinery handle .....	Powder coated metal
Kitchen island benchtop .....	Stone
Kitchen island joinery .....	Poly laminate
Kitchen sink - 1 Bedroom, 2 Bedroom .....	Single under-mount platinum gun metal PVD sink
Kitchen sink - 3 Bedroom .....	Double under-mount platinum gun metal PVD sink
Tapware .....	Gunmetal finish
Cooktop .....	Fisher & Paykel gas cooktop (60cm)
Oven .....	Fisher & Paykel electric oven (60cm)
Rangehood .....	Fisher & Paykel under cup-board rangehood (60cm)
Dishwasher .....	Fisher & Paykel integrated dishwasher (60cm)
Floor .....	Engineered timber floor

**BATHROOM****SAND / OCEAN SCHEME**

Floor .....	Stone/Porcelain
Walls .....	Ceramic tile
Vanity top .....	Stone
Vanity splashback .....	Stone
Vanity drawer .....	Joinery
Vanity cupboard .....	Joinery
Mirror .....	Mirror with LED light
Shower screen .....	Frameless shower screen where possible
Basin .....	Ceramic basin
Toilet .....	Vitreous china with inbuilt cistern
Tapware .....	Gunmetal finish
Shower .....	Wall mounted shower head and hand held Shower
Accessories .....	Gunmetal finish

**LAUNDRY**

Floor .....	Ceramic tile
Walls .....	Paint
Splashback .....	Ceramic tile
Tapware .....	Chrome
Laundry tub .....	Stainless steel single bowl
Dryer .....	Fisher & Paykel dryer (4.5kg)

**OTHER**

Dining, Living, Study (where applicable) floor .....	Engineered timber floor
Bedroom floor .....	Carpet
Walls .....	Paint
Ceiling and bulkheads .....	Paint
Skirting .....	Paint
Doors and doorframes .....	Paint
General wardrobe .....	Poly laminate with handles
Windows and balcony doors .....	Powder coated aluminium
Windows glazing .....	Double glazed along Anzac Pde only, single glaze elsewhere

**EXCLUDED ITEMS**

The following items are excluded from the contract: ..... Blinds

## Execution page

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**Executed as a deed**

Dated: 27/01/2023

**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

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Witness (Signature)

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General Manager (Signature)

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Name of Witness (Print Name)

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Name of General Manager (Print Name)

**Signed, sealed and delivered by Toga Addison Pty Ltd in its own capacity and as trustee for Toga Addison Unit Trust** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors.



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Director/Secretary (Signature)



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Director (Signature)

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Annabel weiss

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Name of Director/Secretary (Print Name)

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Allan vidor

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Name of Director (Print Name)

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