

Planning Agreement

Environmental Planning and Assessment Act 1979

31 – 35 Flora Street Arncliffe

Arncliffe Precinct

Minister for Planning and Public Spaces (ABN 20 770 707 468)

Landpearl Pty Ltd (ACN 104 625 809)

Apolo Apartments Pty Ltd (ACN 634 726 211)

Victor James Nolan

Jane Lynette Timmins

Peter Bruce Christofides

Suzanne Lenore Christofides

George Lee Gow

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This deed is dated

29 May 2020

[Signature]

Parties:

Minister

Minister for Planning and Public Spaces (ABN 20 770 707 468)
of Level 15, 52 Martin Place, Sydney, New South Wales 2000

Landpearl

Landpearl Pty Ltd (ACN 104 625 809) of Suite 2, Level 28, 1 Market Street Sydney NSW 2000

Apolo

Apolo Apartments Pty Ltd (ACN 634 726 211) of Suite 2802, 1 Market Street Sydney NSW 2000

Landowner

Victor James Nolan of 31 Flora Street Arncliffe NSW 2205

Jane Lynette Timmins of 31 Flora Street Arncliffe NSW 2205

Peter Bruce Christofides of 33 Flora Street Arncliffe NSW 2205

Suzanne Lenore Christofides of 33 Flora Street Arncliffe NSW 2205

George Lee Gow of 35 Flora Street Arncliffe NSW 2205

[Signatures: Victor James Nolan, Jane Lynette Timmins, Peter Bruce Christofides, Suzanne Lenore Christofides, George Lee Gow]

Introduction:

- A The Landowner owns the Land.
- B Landpearl has call options to purchase the Land from the Landowner.
- C Landpearl has nominated Apolo to be its nominee to exercise the call option to purchase the Land.
- D Apolo proposes to carry out the Development on the Land.
- E The Developer has made a Development Application to the Consent Authority in respect of the Land.
- F Clause 7.1 of the LEP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure referred to in clause 7.1 of the LEP.
- G The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by the LEP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this deed, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2019.

Business Day means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

Consent Authority has the same meaning as in the Act.

Construction Certificate has the same meaning as in the Act.

Contribution Amount means the amount of the monetary contribution to be paid by the Developer as described in Schedule 4.

CPI means the Consumer Price Index (All Groups Index) for Sydney published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2020 and each anniversary of 1 July 2020.

Current CPI means the CPI number for the quarter ending 31 March in the calendar year in which the relevant adjustment is made.

Dealing means, in relation to the Land, to sell, transfer, assign, mortgage, charge, dispose of, encumber or otherwise deal with the Land in whole or part.

Developer means Landpearl, Apolo and the Landowner, unless otherwise specified in this deed.

Development means the proposed demolition of structures on the Land for erection of an 8-storey residential flat building comprising 42 residential units and two basement levels of car

parking, generally in accordance with the plan in Schedule 6 and DA 2019/33 lodged with Bayside Council.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions to be provided by the Developer in accordance with Schedule 4.

ELNO has the same meaning as in the *Electronic Conveyancing National Law* (NSW).

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insurance Bond means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Insurance Company means an insurance company authorised under the *Insurance Act 1973* and subject to prudential supervision by Australian Prudential Regulatory Authority.

Land means the land described in Schedule 3.

Landowner means, individually and collectively, as the context requires, Victor James Nolan, Jane Lynette Timmins, Peter Bruce Christofides, Suzanne Lenore Christofides and George Lee Gow.

LEP means *Rockdale Local Environmental Plan 2011*.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Minister means the Minister for Planning and Public Spaces and includes the Secretary and the Secretary's nominee.

Planning Application means:

(a) a Development Application; or

(b) any other application required under the Act,

which seeks approval for the carrying out of the Development on the Land.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

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

Residential Accommodation has the same meaning as in the standard local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006 as at the date of this deed.

Residential Lot means a strata lot that is created for the purposes of Residential Accommodation.

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in accordance with clause 7.1 of the LEP.

Secretary means the Secretary of the Department of Planning, Industry and Environment.

Security means a Bank Guarantee or an Insurance Bond.

Strata Certificate has the same meaning as in the *Strata Schemes Development Act 2015* (NSW).

Strata Plan has the same meaning as in the *Strata Schemes Development Act 2015* (NSW), but also includes a strata plan of subdivision within the meaning of that Act.

Subdivision Certificate has the same meaning as in the Act.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, a **schedule** or an **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** and **annexures** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;

- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4.

4.2 Special Infrastructure Contribution

- (a) This clause applies where:

- (i) the Minister determines a special infrastructure contribution (**SIC**) under section 7.23 of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and
 - (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for the Development authorised by the relevant Development Consent is less than the Development Contribution that would otherwise be payable under this deed for the Development, then:
 - (i) the Developer is required to pay only the SIC Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 4.1 and clauses 1(b) and 2(b) of Schedule 4.
- (c) Clause 4.2(b) applies only if the Development Contribution has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution paid before that time.
- (d) In this clause 4.2, a reference to the SIC Amount for the Development authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for the Development calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 7.24 of the Act had not been excluded by this deed and the Development Consent had been granted on or after the SIC Determination took effect.

4.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Security to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 15 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

- (a) The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.
- (b) For the purposes of clause 7.3 (a), the Developer has not satisfied all of its obligations under this deed if:

- (i) a Strata Certificate has not yet been issued for the proposed Strata Plan in relation to the Land and the residential flat building authorised to be erected by the Development Consent for the Development on the Land, or
- (ii) as a result of the modification of the Development Consent for the Development (or an application for such a modification), an additional Contribution Amount is payable, or would become payable, in accordance with clause 5 of Schedule 4, and that amount has not been paid.

7.4 Interest in Land

The Landowner represents and warrants that it is:

- (a) the owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

The Developer, in its capacity as Developer, represents and warrants that it is:

- (a) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land; and
- (b) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

7.5 Right to lodge caveat

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title of the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
 - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1.
- (c) If, after three months of receipt of a copy of this deed executed by the Minister, the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and

- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause does not merge on completion or termination of this deed.

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming

Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and

- (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed remains outstanding.
- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.
- (d) This clause 10.2 does not apply to the sale or transfer of any part of the Land to Apolo or Landpearl.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clause 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

10.4 Release of Landowner

The Minister acknowledges and agrees that if a Landowner (**Exiting Landowner**) transfers all of its Land to Apolo or Landpearl, on and from the date of the transfer and subject to Apolo or

Landpearl providing, to the Minister's satisfaction, evidence that it has entirely assumed ownership of that Land:

- (a) the Exiting Landowner will be released and discharged from the obligations arising under this deed; and
- (b) the Minister will not seek to enforce the terms of this deed against the Exiting Landowner in the event of a breach by the Developer of any obligation arising under this deed.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents, Subdivision Certificates, Construction Certificates and Strata Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;
 - (iv) a compliance schedule showing the details of all Contribution Amounts provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

13.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

13.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

13.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable valuation costs, legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or

- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - (A) before 5 pm on a Business Day, on that Day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
Planning instrument and/or development application – (section 7.4(1)) The Developer has: (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 7.4 (3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4 (3)(b))	N/A
The scope, timing and manner of delivery of contribution required by this deed – (section 7.4 (3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4 (3)(d))	The application of sections 7.11 and 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4 (3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 7.4 (3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3 of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning, Industry and Environment

~~320 Pitt Street~~ 12 Darcy Street,
SYDNEY NSW 2000 Parramatta NSW 2150

Email: planningagreements@planning.nsw.gov.au DW

Landpearl

Contact: The Company Directors and Secretary, Landpearl Pty Ltd

Address: Suite 2, Level 28, 1 Market Street Sydney NSW 2000

Email: troy.w@landpearl.com.au

Apolo

Contact: The Company Directors and Secretary, Apolo Apartments Pty Ltd

Address: Suite 2802, 1 Market Street Sydney NSW 2000

Email: troy.w@landpearl.com.au

Landowner

Contact: Victor James Nolan and Jane Lynette Timmins

Address: 31 Flora Street Arncliffe NSW 2205

Email: N/A

Landowner

Contact: Peter Bruce Christofides and Suzanne Lenore Christofides
Address: 33 Flora Street Arncliffe NSW 2205
Email: N/A

Landowner

Contact: George Lee Gow
Address: 35 Flora Street Arncliffe NSW 2205
Email: N/A

Schedule 3**Land (clause 1.1)****1. Lots proposed for development**

Lot	Section	Deposited Plan	Folio Identifier
12	2	4059	12/2/4059
13	2	4059	13/2/4059
14	2	4059	14/2/4059

Schedule 4

Development Contribution (clause 4)

1. Development Contribution

- (a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Value	Timing
Contribution Amount - Monetary contribution towards designated State public infrastructure	\$9,119 for each proposed Residential Lot in the Development	Pursuant to clause 3 of this Schedule 4

- (b) The Minister and Developer acknowledge and agree that the Development Contribution is the sum of the Contribution Amounts under this deed.

2. Calculation of the value of a Contribution Amount

- (a) A Contribution Amount will be an amount equal to the sum represented by "X" in the following formula:

$$X = N \times \$9,119$$

"N" means the number of Residential Lots in the proposed residential flat building in the Development in respect of which a Construction Certificate is sought.

- (b) On the CPI Adjustment Date, a Contribution Amount is to be adjusted by multiplying the Contribution Amount payable by an amount equal to the Current CPI divided by the Base CPI.
- (c) For the avoidance of doubt, the omission or absence of any adjustment to the Contribution Amount in accordance with clause 2 (b) of this Schedule 4, does not waive the requirement for the Contribution Amount to be adjusted in accordance with that clause.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee the Contribution Amount prior to the issue of the Construction Certificate for the erection of the residential flat building to which the Development Consent for the Development relates.
- (b) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the Construction Certificate.
- (c) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the Construction Certificate within the meaning of clause 146A of the Regulation.

4. Existing dwellings

- (a) The parties acknowledge that there are three lawfully constructed dwellings located on the Land at the date of commencement of this deed.
- (b) Notwithstanding clause 1(a) and clause 2 of this Schedule 4, the parties agree that the number of Residential Lots in respect of which the Contribution Amount is to be calculated is reduced by three.

5. Additional contribution amount required if strata plan creates additional Residential Lots

- (a) The purpose of this clause 5 is to ensure that an additional Contribution Amount is paid if the Development Consent for the Development is modified so as to authorise the creation of additional Residential Lots in the residential flat building the subject of the Development Consent after a Contribution Amount has already been paid in accordance with this Schedule 4.
- (b) The Developer agrees that if a strata plan in relation to the residential flat building authorised to be erected by the Development Consent would, on registration, create more than the number of Residential Lots on which the Contribution Amount paid by the Developer in accordance with clauses 2 and 4 of this Schedule 4 was based, the Developer must pay to the Minister, or the Minister's nominee, an additional Contribution Amount calculated by:
 - (i) multiplying the number of additional Residential Lots by \$9,119, and
 - (ii) adjusting the amount so obtained by multiplying it by the Current CPI divided by the Base CPI.
- (c) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to make an application for a strata certificate in relation to a strata plan referred to in clause 5 (b) of this Schedule 4.
- (d) The additional Contribution Amount under this clause 5 must be paid before the issue of the relevant Strata Certificate.
- (e) For the purposes of this clause 5, the Current CPI is:
 - (i) if the additional Contribution Amount is to be paid between 1 January and 30 June in any calendar year – the CPI number for the quarter ending on 31 March in the preceding calendar year; and
 - (ii) if the additional Contribution Amount is to be paid between 1 July and 31 December in any calendar year - the CPI number for the quarter ending on 31 March in that calendar year.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the "Minister for Planning and Public Spaces" and the "Department of Planning, Industry and Environment ABN 20 770 707 468" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Security

- (a) The Developer agrees that clause 1, and this clause 2, of Schedule 5 operate as a deed poll in favour of the Minister from the date of execution by the Developer of this deed.
- (b) To avoid doubt, clause 1, and this clause 2, of Schedule 5 commence from the date of execution by the Developer, even though this deed has not commenced pursuant to clause 2.1.
- (c) At the time the Developer executes this deed, the Developer must provide the Security to the Minister having a face value amount of \$355,641 (**Security Amount**) in order to secure the Developer's obligations to make a Development Contribution under this deed when it is executed by the Minister.
- (d) From the date the Developer executes this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Security and call upon it in the circumstances set out in clause 3 of this Schedule 5.
- (e) To the extent necessary, the definitions in clause 1 of this deed apply to the construction of the deed poll created by this clause 2 of Schedule 5.
- (f) The deed poll created by this clause 2 of Schedule 5 will cease to operate 6 months from the execution by the Developer of this deed unless the Minister has executed the deed within that period.

3. Claims under Security

- (a) The Minister may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:

- (i) the Minister calls upon the Security; and
- (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
- (iii) has notified the Developer of the call upon the Security in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule, the Minister is in possession of Security for a face value equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Security; and
- (b) the whole of the monies secured by the Security has not been expended and the monies accounted for in accordance with clause 3 of this Schedule 5,

then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer.

5. Substitution of Security and registration on title

- (a) If the Developer provides the Minister with:
 - (i) evidence of registration of this deed on the title to the Land and the Minister is satisfied such registration has been effected; and
 - (ii) security for a face value of \$88,910 (**Replacement Security**),

the Minister will accept the Replacement Security as the Security Amount and return the Security required under clause 2 of this Schedule 5 (**Original Security**) less any costs, charges, duties and taxes payable, or the remainder of the monies secured by the Original Security, to the Developer subject to clause 5(b) of this Schedule 5.

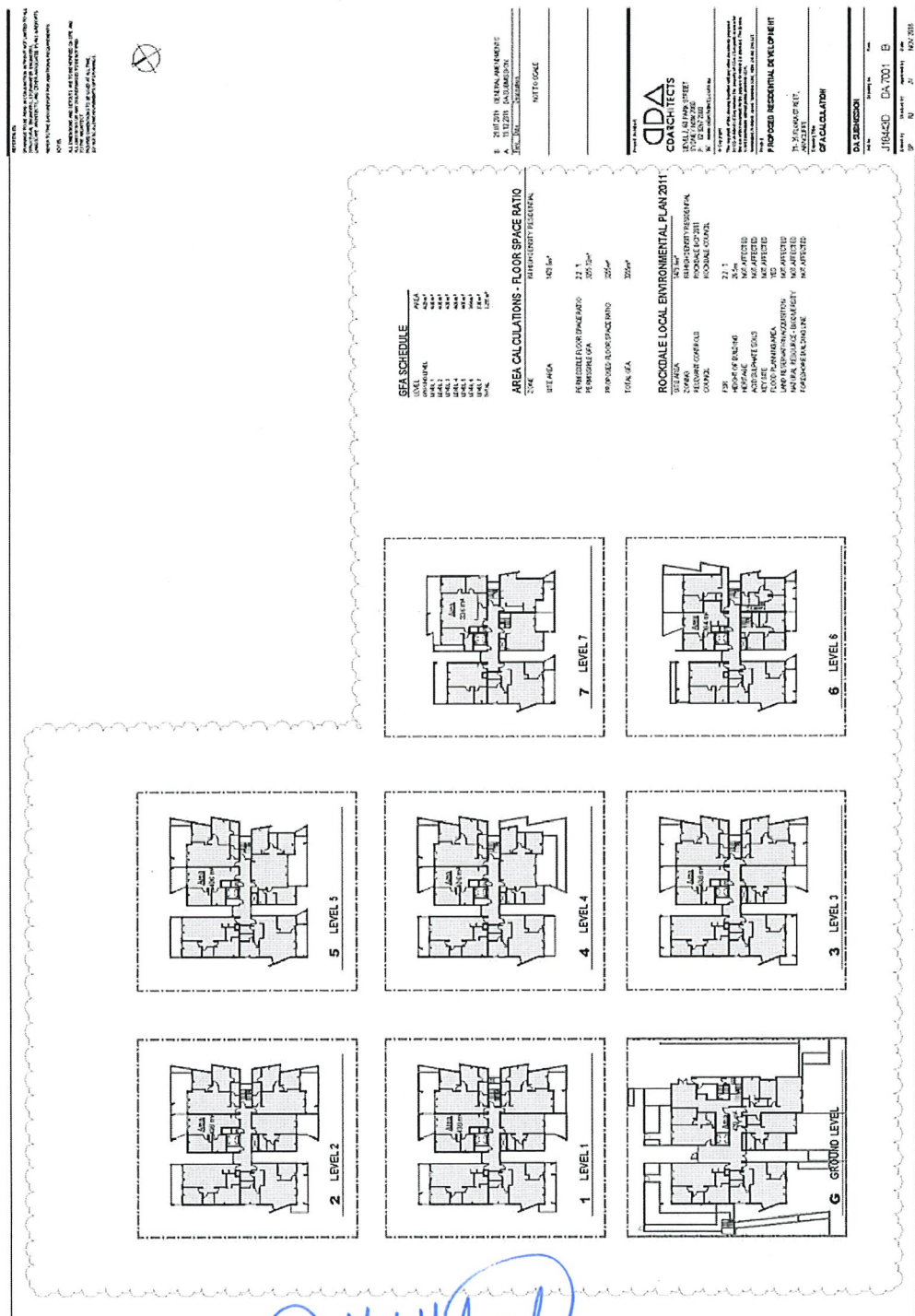
- (b) The Minister will not be obliged to accept the Replacement Security where the Developer is in breach of its obligations under this deed.
- (c) To avoid doubt, the provisions of this Schedule 5 (other than clause 2) apply to the Replacement Security in the same way as they apply to the Original Security.

Antipodis
P. Antipodis
by you

Schedule 6: proposed plan of subdivision

(INDICATIVE ONLY – this plan does not describe the land subject to this agreement)

James



Beck Whitehead

W

W

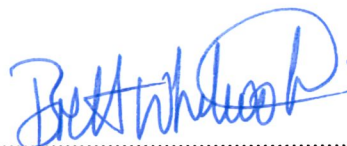
Execution page

Executed as a deed

Signed, sealed and delivered by the Minister
for Planning and Public Spaces (ABN 20 770
707 468), in the presence of:



.....
Signature of witness



.....
Signature of the delegate of the Minister for
Planning and Public Spaces



.....
Name of witness in full



.....
Name of the delegate of the Minister for
Planning and Public Spaces or delegate



.....
Address of witness

Signed, sealed and delivered by Apolo
Apartments Pty Ltd (ACN 634 726 211) in
accordance with section 127(1) of the
Corporations Act 2001 (Cth) by:



.....
Signature of Sole Director and Secretary



.....
Name of Sole Director and Secretary in full

Signed, sealed and delivered by Landpearl
Pty Ltd (ACN 104 625 809) in accordance with
section 127(1) of the *Corporations Act 2001*
(Cth) by:



.....
Signature of Director

EDDIE TRAN

.....
Name of Director in full

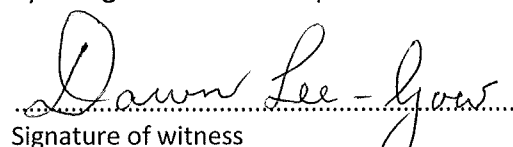


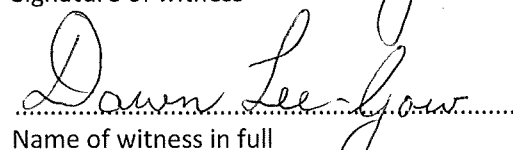
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Signature of Director/Secretary

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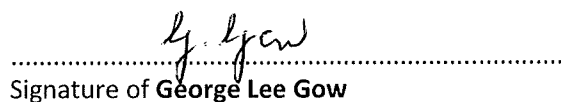
.....
Name of Director/Secretary in full

Signed sealed and delivered
by George Lee Gow in the presence of:


.....
Signature of witness


.....
Name of witness in full

35 Flora St Cronchiffe
.....
Address of witness


.....
Signature of George Lee Gow

Signed sealed and delivered
by Suzanne Lenore Christofides in the
presence of:

.....*Arew*.....
Signature of witness

.....*Suzanne Lenore Christofides*.....
Signature of **Suzanne Lenore Christofides**

.....*ANGELA NEW*.....
Name of witness in full

.....*40 HERSEY ST, BLAXLAND, NSW, 2774*.....
Address of witness

Signed sealed and delivered
by Peter Bruce Christofides in the presence
of:

.....*Dawn Lee-gow*.....
Signature of witness

.....*P. Christofides*.....
Signature of **Peter Bruce Christofides**

.....*Dawn Lee-gow*.....
Name of witness in full

.....*35 Flora St Arncliffe*.....
Address of witness

Signed sealed and delivered
by Victor James Nolan in the presence of:

Tracey Bailey
Signature of witness

[Signature]
Signature of Victor James Nolan

TRACEY ANN BAILEY
Name of witness in full

36 WATKIN STREET NEWTOWN 2042
Address of witness

Signed sealed and delivered
by Jane Lynette Timmins in the presence of:

Tracey Bailey
Signature of witness

[Signature]
Signature of Jane Lynette Timmins

TRACEY ANN BAILEY
Name of witness in full

36 WATKIN STREET NEWTOWN 2042.
Address of witness