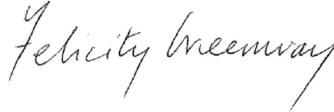


SIDE DEED TO PLANNING AGREEMENT

THE COUNCIL OF THE CITY OF SYDNEY, THE MINISTER ADMINISTERING THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979, AND NEW SOUTH WALES LAND AND HOUSING CORPORATION AGREE THAT THE ATTACHED IS THE FORM OF DEED OF ACCESSION REFERRED TO IN CLAUSE 1.1 AND CLAUSE 13.2(b)(iii) OF THE PLANNING AGREEMENT FOR WATERLOO ESTATE (SOUTH).

Date: 23 February 2023



Electronic signature of me, Felicity Greenway, affixed on 23 February 2023

**Signed, sealed and delivered** for  
**THE COUNCIL OF THE CITY OF SYDNEY** (ABN 22 636 550 790) by its duly authorised officer, in the presence of:



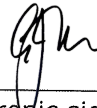
Electronic signature of witness  
affixed by me on 21 Feb 2023 [date]

Alisa Nicholson  
Name of witness

Level 1, 456 Kent Street,  
Sydney NSW 2000

Address of witness

This deed was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the Electronic Transactions Act 2000 (NSW)



Electronic signature of authorised officer  
affixed by me on 21 Feb 2023 [date]

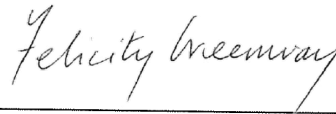
Graham Jahn  
Name of authorised officer

Director City Planning, Development and Transport  
Position of authorised officer  
Authorised delegate pursuant to section 377 of the Local Government Act 1993

Type text here

**Signed, sealed and delivered** by the **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468), in the presence of:

Electronic signature of me, Felicity Greenway, affixed on 23 February 2023



Electronic signature of me, Kate Speare, affixed by me on 23 February 2023



Signature of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

Signature of witness

Felicity Greenway

Name of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

Kate Speare

Name of witness

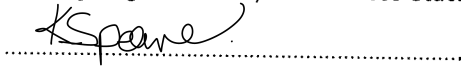
A/Deputy Secretary - Planning Policy

Position of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

12 Darcy Street, Parramatt (4 Parramatta Square)

Address of witness

\*By signing this deed, the witness states that they witnessed the signing of this deed by:



(being the name of the Minister's delegate)

over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW)

**Signed, sealed and delivered** for  
**NEW SOUTH WALES LAND AND  
HOUSING CORPORATION** (24 960  
729 253) by its duly authorised  
delegate, and I hereby certify that I  
have no notice of revocation of such  
delegation, in the presence of:



Signature of witness

LISA MARIGLIANO

Name of witness (print)



Signature of delegate

SIMON NEWPORT

Name of delegate (print)

CHIEF EXECUTIVE,

Office held

NSW Land and Housing  
Corporation

## DEED OF ACCESSION

THIS DEED is made on \_\_\_\_\_ between the following Parties:

1. **The Council of the City of Sydney ABN 22 636 550 790** of Town Hall House, Level 1, 456 Kent Street, SYDNEY NSW 2000 ("**City**");
1. **Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468)** c/- NSW Department of Planning and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150 ("**Minister**");
2. **New South Wales Land and Housing Corporation ABN 24 960 729 253** of 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2015 ("**Existing Developer**"); and
3. **[Insert Name, ACN and address]** ("**Incoming Party**").

### BACKGROUND

- A. The City, the Minister and the Existing Developer are Parties to the VPA.
  - B. The VPA relates to the whole of the Land.
  - C. The Existing Developer has engaged the Incoming Party to carry out the Development (as defined in the VPA) in accordance with the Development Agreement, including carrying out the Remaining Obligations.
  - D. The Incoming Party wishes to accede to and become a party to the VPA as Developer for the purposes of the Remaining Obligations.
  - E. The Incoming Party agrees to perform the Remaining Obligations and seeks to obtain certain benefits of the Existing Developer under the VPA in relation to the Remaining Obligations.
  - F. The Existing Developer will remain as the Developer under the VPA for the purposes of the Owner's Obligations.
- A. The parties wish to acknowledge the accession by the Incoming Party as Developer for the Remaining Obligations and have agreed to enter into this Deed pursuant to clause 13.2(b)(iii) of the VPA, at the request of the Existing Developer, on the terms set out in this Deed.

### 1. Definitions and Interpretation

#### 1.1 Definitions

- (a) Words and expressions defined in the VPA have the same meaning in this Deed unless otherwise stated.

- (b) The following definitions apply in this Deed:

**Accession Date** means the date of this Deed.

**Development Agreement** means the development agreement dated ### between the Existing Developer (as Developer under the VPA) and the Incoming Party for the Incoming Party to carry out the Development.

**Land** means [insert].

**Owner's Obligation** means an obligation of the Developer under the VPA which may only be carried out by the Existing Developer as the registered owner of the Land, as set out in the following provisions of the VPA:

- (a) clause 1.3 (Application of this document if no Construction Certificate or Occupation Certificate required);
- (b) clause 6.5(c) (Non-completion of Public Benefits) but only in relation to the grant of a licence for access, and only to the extent the Incoming Party does

not have the authority under the Development Agreement to grant the licence to the City and requires the Existing Developer to grant this licence;

- (c) clause 8.2(c) (Defect in the Developer's Works) but only to the extent the Incoming Party does not have the authority under the Development Agreement to grant the licence to the City and requires the Existing Developer to grant this licence;
- (d) clause 9.1 (Registration of this document);
- (e) clause 10.6 (Compulsory acquisition);
- (f) clause 13.1 (Dealing by the City);
- (g) clauses 13.2(a) and 13.2(b) (Dealings by the Developer);
- (h) clause 13.3 (Extinguishment or creation of interests on Transfer Land) but only to the extent the obligations require the Existing Developer, as registered owner of the Land, to execute instruments or other documents or do other things necessary to give effect to the clause;
- (i) clause 14 (Termination);
- (j) clauses 3.3(a)-(c) in Schedule 3 (Obligations on transfer) but only to the extent the obligations require the Existing Developer, as registered owner of the Land, to execute instruments or other documents or do other things necessary to effect the transfer of the Transfer Land.

**Remaining Obligations** means all of the obligations and liabilities of the Developer under the VPA, excluding the Owner's Obligations.

**VPA** means the Planning Agreement for Waterloo Estate (South) entered into between the City, the Minister and the Existing Developer on [date], registered number [#] [as amended by#].

### **1.3 Headings**

Headings do not affect the interpretation of this Deed.

## **2. Accession**

### **2.1 Covenants by the Incoming Party**

The Incoming Party confirms that it has received a copy of the VPA and agrees that on and from the Accession Date it:

- (a) is added to the VPA as Developer for the purposes of the Remaining Obligations;
- (b) assumes the Remaining Obligations and is bound by the Remaining Obligations as if the Incoming Party was named as the Developer in the VPA for the purposes of those Remaining Obligations;
- (c) without limiting clause 2.1(b), must punctually carry out and perform the Remaining Obligations under the VPA which are not performed at the date of this Deed; and
- (d) will be, to the extent of the Remaining Obligations only:
  - (i) entitled to the benefit of the VPA; and
  - (ii) entitled to enforce the VPA against the City and the Minister,as if the Incoming Party had originally been named as the Developer in that VPA.

### **2.2 Notices and Representative**

- (a) Item 5 in Schedule 1 of the VPA will be the details of the Existing Developer's Representative.
- (b) A new Item 5A is inserted in Schedule 1 of the VPA for the Incoming Party as Developer for the Remaining Obligations as follows:

<b>5A.</b>	<b>Developer's Representative (Developer (for Remaining Obligations))</b>	<b>Name:</b>	[Insert Representative's name/position]
		<b>Address:</b>	[Insert address]
		<b>Email:</b>	[Insert email address]

### 3. Performance of Owner's Obligations

- (a) The Existing Developer will continue to be liable as Developer for the performance of the Owner's Obligations.
- (b) The following provisions of the VPA will continue to apply to the Existing Developer after the Accession Date (but not so as to release the Incoming Party from the Remaining Obligations) to the extent necessary to give effect to the Owner's Obligations:
  - (i) clause 11 (Dispute Resolution);
  - (ii) clause 12 (Taxes and GST);
  - (iii) clause 15 (Confidentiality and Disclosures);
  - (iv) clause 16 (Notices); and
  - (v) clause 17 (General).
- (c) Subject to clause 3(a) and to the extent permitted at law (including section 7.6(3) of the *Environmental Planning and Assessment Act 1979* (NSW)), the City and the Minister agree that on and from the Accession Date the Existing Developer is released and discharged with respect to all of the obligations and liabilities in relation to the Remaining Obligations and from all claims and demands in respect of the performance of and obligations in relation to the Remaining Obligations that arise on or after the Accession Date (except for any breach of the VPA by the Existing Developer prior to the Accession Date).
- (d) The Existing Developer indemnifies the City against all damage, expense, loss or liability of any nature suffered or incurred by the City to the extent arising from any wilful or negligent act or omission by the Existing Developer (or any Personnel) in connection with the performance of the Owner's Obligations only, except where the damage, expense, loss or liability suffered or incurred by the City is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).

### 4. Warranties by the Incoming Party

- (a) The Incoming Party warrants to the City and the Minister that, at the date of this Deed:
  - (i) it is entitled to obtain all consents and approvals that are required by the VPA and do all things necessary to give effect to the VPA (except where it is the obligation of the Existing Developer as registered owner of the Land);
  - (ii) all works performed by the Incoming Party (as the Developer under the VPA for the purposes of the Remaining Obligations) and its Personnel will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Incoming Party's size and experience; and
  - (iii) it is not aware of any matter which may materially affect the Incoming Party's ability to perform its obligations under the VPA.
- (b) The Incoming Party warrants to the City and the Minister that it will have obtained, before commencing delivery of any part of the Public Benefits, all Authorisations and

insurances required under any Law to carry out its obligations under the VPA in respect of that part.

## 5. Termination, assignment or novation of the Development Agreement

- (a) The Existing Developer must promptly notify the City and the Minister in writing if the Development Agreement is terminated.
- (b) If the Development Agreement is terminated and the Existing Developer enters into a new development agreement with a replacement Contractor to complete the Development and deliver the remaining Developer Works, the Existing Developer must promptly notify the City and the Minister in writing that it will either:
  - (i) require the replacement Contractor to be a party to the VPA as Developer for the Remaining Obligations, in which case:
    - (A) the Existing Developer, the Minister, the City and the Incoming Party will enter into a new deed of accession with the replacement Contractor, substantially in the form of this Deed (as amended to include other terms reasonably required by the City, the Minister and the Existing Developer including to provide for the replacement Contractor to be a party to the VPA and replace the Incoming Party as Developer for the Remaining Obligations and to assume the Remaining Obligations); or
    - (ii) not require the replacement Contractor to be a party to the VPA as Developer for the Remaining Obligations, in which case:
      - (A) the Existing Developer will be the Developer under the VPA for the Owner's Obligations and the Remaining Obligations; and
      - (B) the Existing Developer, the Minister, the City and the Incoming Party will enter into a deed of accession or other appropriate document, substantially in the form of this Deed (as amended to include other terms reasonably required by the City, the Minister and the Existing Developer including terms reasonably required to provide for the Existing Developer to replace the Incoming Party as Developer for the Remaining Obligations under the VPA and to assume the Remaining Obligations).
- (c) The Incoming Party remains the Developer for the Remaining Obligations until the relevant deed of accession, or other appropriate document, under clause 5(b) is entered into.
- (d) If the Development Agreement is wholly or partially assigned or novated from the Incoming Party to a third party (**Transferee**):
  - (i) the Existing Developer, the Minister, the City and the Incoming Party will enter into a new deed with the Transferee, substantially in the form of this Deed (as amended to include other terms reasonably required by the City, the Minister and the Existing Developer including to provide for the Transferee to be a party to the VPA and replace the Incoming Party as Developer for the Remaining Obligations and to assume the Remaining Obligations; and
  - (ii) the Incoming Party remains the Developer for the Remaining Obligations until the deed under clause 5(d)(i) is entered into.

## 6. Governing Law

This deed is governed by the laws of New South Wales.

**7. Further acts**

Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

**8. Counterparts**

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.