

Planning Agreement

Council of the City of Sydney
and
Minister administering the *Environmental Planning and Assessment Act 1979*
and
NSW Land and Housing Corporation

Planning Agreement for **Waterloo Estate (South)**

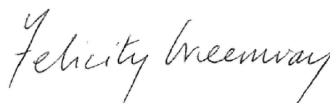
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Planning Agreement
February 2023

The Council of the City of Sydney



Minister administering the *Environmental Planning and Assessment Act 1979*



Green Global Connected
NSW Land and Housing Corporation

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THIS PLANNING AGREEMENT is made on **23 February**

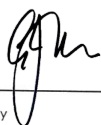
2023

BETWEEN:

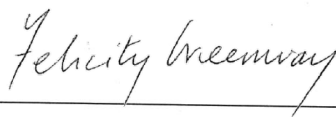
- (1) **The Council of the City of Sydney** ABN 22 636 550 790 of Town Hall House, Level 1, 456 Kent Street, SYDNEY NSW 2000 (the **City**);
- (2) **Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468) c/- NSW Department of Planning and Environment of Level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

BACKGROUND


- (A) The Developer is the owner of the Land and intends to commence the redevelopment of the Waterloo Estate by undertaking the Development on the Land in accordance with the Planning Proposal, Instrument Change and Waterloo Estate (South) Design Guide. The Development will be carried out in Phases over a number of years.
- (B) The Developer proposes to redevelop the Waterloo Estate. The Waterloo Estate comprises the Land (being Waterloo Estate (South)), Waterloo Estate (Central) and Waterloo Estate (North).
- (C) The Developer submitted a planning proposal and Waterloo Estate (South) Design Guide for the Land. The Instrument Change (being an amendment to *Sydney Local Environmental Plan 2012*) to give effect to the finalised Planning Proposal has been made. The Waterloo Estate (South) Design Guide has been approved.
- (D) The Developer intends to appoint a Contractor to carry out each Phase of the works for the Development.
- (E) The Developer, the Minister and the City have been working together on public infrastructure to support the redevelopment of the Land, in accordance with the Planning Proposal.
- (F) The Developer has offered to enter into this document with the City and the Minister to provide the Public Benefits on the terms of this document.
- (G) The Developer, the Minister and the City intend that the Public Benefits to be provided in accordance with this document be in place of any development levy that might otherwise be required under section 31 (2) of the *Redfern-Waterloo Authority Act 2004* (as continued in effect by the *Growth Centres (Development Corporations) Act 1974*) in accordance with the Redfern-Waterloo Authority Contributions Plan 2006 while that plan remains in force.



The Council of the City of Sydney



Minister administering the *Environmental Planning and Assessment Act 1979*



NSW Land and Housing Corporation

- (H) The Developer, the Minister and the City propose that the Public Benefits be provided in connection with the development of Waterloo Estate (South) instead of contributions under section 7.11 and section 7.12 of the Act for that development including in accordance with the City of Sydney Development Contributions Plan 2015.
- (I) The Developer proposes to redevelop the Waterloo Estate (North) Land and the Waterloo Estate (Central) Land in the future by lodging further planning proposals and development applications. The parties have agreed that part of the value of the Public Benefits provided in relation to the Development on the Land may be used to discharge in part or whole to the value of the Credit Amount any future liability of the Development to make development contributions under section 7.11 or 7.12 of the Act for development on the Waterloo Estate (North) Land or Waterloo Estate (Central)) Land, on the terms set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

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

Adverse Affectation has the same meaning as in Part 3 of Schedule 2 of the *Conveyancing (Sale of Land) Regulation 2022 (NSW)*.

Attributed Value means the value the City and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in clause 1 of Schedule 3 of this document and Part E of Annexure A in relation to the Developer's Works.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Personal Information means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Developer).

City's Policies means all policies and procedures relevant to the provision of the Public Benefits, as notified by the City in writing to the Developer.

City's Representative means the person named in Item 3 of Schedule 1 or the person's delegate.

Completion means, for each Phase, the point at which:

- (a) the Developer's Works are complete except for minor defects:
 - (i) the existence of which do not prevent the Developer's Works being reasonably capable of being used for their intended purpose;
 - (ii) which the Developer has grounds for not promptly rectifying; and
 - (iii) rectification of which will not affect the immediate and convenient use of the Developer's Works for their intended purpose; and
- (b) to the extent the RAB (CEP) Act or the DBP Act (as applicable) applies to the Developer's Works, the Developer has obtained all Occupation Certificate(s) that may be required under Part 6 of the Act for the Developer's Works and submitted them to the City (and such Occupation Certificates are not invalid by reason of the RAB (CEP) Act or the DBP Act) (as applicable).

Completion Notice means a notice issued by the Developer in accordance with clause 6.3.

Concept Development Application means a concept development application within the meaning of the Act for development of the Land that is generally consistent with the Planning Proposal and the Instrument Change.

Confidential Information means:

- (a) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or

- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Construction Certificate has the same meaning as in the Act.

Construction Issued Regulated Design means, in respect of the Developer's Works, a "construction issued regulated design" as that term is defined in the DBP Regulation.

Contamination has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

Contractor means the contractor engaged by the Developer to undertake the Development including the Developer's Works.

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the Consumer Price Index (All Groups) for Sydney published by the Australian Bureau of Statistics (or any other index published in substitution for this index).

Crown Building Work Certificate means a certificate by or on behalf of the Crown, for the purposes of section 6.28 of the Act, that Crown building work complies with the *Building Code of Australia* as referred to in that section.

DBP Act means the *Design and Building Practitioners Act 2020* (NSW).

DBP Regulation means the *Design and Building Practitioners Regulation 2021* (NSW).

Dealing means selling, transferring, assigning, novating, mortgaging, charging, or encumbering and, where appearing, **Deal** has the corresponding meaning.

Deed of Accession means a deed of accession to add the Contractor as a party to this document and to allocate obligations under this document to the Developer and the Contractor on terms to be agreed between the parties (acting reasonably).

Deed of Novation means the deed of novation in the form attached as Annexure B.

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Developer's Works or any other matter which prevents the Developer's Works from complying with the terms of this document.

Defects Liability Period means:

- (a) in relation to the Developer's Works other than the Essential Infrastructure, the period of 12 months from the date on which the Developer's Works reach Completion; and
- (b) in relation to the Essential Infrastructure, the period of 24 months from the date on which the Essential Infrastructure reaches Completion.

Design Compliance Declaration means, in respect of the Developer's Works, a "design compliance declaration" as that term is defined in the DBP Act.

Developer's Representative means the person named in Item 5 of Schedule 1 or the person's delegate.

Developer's Works means those parts of the Public Benefits described as "Developer's Works" and "Essential Infrastructure" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document which includes any required connections or transitions to existing public infrastructure (roads, footways, shared zones, parks and the like) and may include works outside the Land, removal of retaining walls and general make good of the existing public infrastructure.

Development means the development of the Land by the Developer described at Item 2 of Schedule 1.

Development Application means any development application identified in Item 6 of Schedule 1 and includes all plans, reports models, photomontages and material boards (as amended or supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means a development consent (within the meaning of the Act) granted to a Development Application for the Development and includes all modifications made under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Dwelling has the same meaning as in the standard instrument set out at the end of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this document.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011* (NSW);
- (b) the *Protection of the Environment Operations Act 1997* (NSW); and
- (c) the *Contaminated Land Management Act 1997* (NSW).

Essential Infrastructure means that part of the Public Benefit described as "Essential Infrastructure" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or

- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Gross Floor Area has the meaning given to that term in the *Sydney Local Environment Plan 2012* in effect at the date of this document.

GST means the same as in the GST Act.

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

Guarantee means an irrevocable and unconditional bank guarantee or documentary performance bond for the Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) bb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the City (acting reasonably).

Guarantee Amount(s) means the total amount specified in Item 7 of Schedule 1 of this document.

Guarantee Amount(s) Due Date means the date or milestone by which the Developer must provide a Guarantee to the City, as set out at Items 7 and 8 of Schedule 1.

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Instrument Change means an amendment to the LEP that is generally in accordance with the Planning Proposal and includes *Sydney Local Environmental Plan 2012 (Amendment No 83)*.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

LAHC means New South Wales Land and Housing Corporation constituted by the *Housing Act 2001 (NSW)*.

Land means the land described in Item 1 of Schedule 1 of this document.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

LEP means *Sydney Local Environmental Plan 2012*, as amended by *Sydney Local Environmental Plan 2012 (Amendment No 83)*.

Minister's Representative means the person named in Item 4 of Schedule 1 or the person's delegate.

Monetary Contribution means that part of the Public Benefits described as "Monetary Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

Occupation Certificate has the same meaning as in the Act.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

Personnel means the Developer's officers, employees, agents, contractors or subcontractors, including the Contractor.

Phase means each phase in the staged construction of the Development advised by the Developer to the City under clause 6.2.

Phase Completion Date means the due dates for completion of each Phase advised by the Developer to the City under clause 6.2.

Planning Proposal means the planning proposal for the Land described in the document titled "Plan Finalisation Report – PP – 2021-3265 – Waterloo Estate (South) – Sydney Local Environmental Plan 2012 Amendment No. 83" dated November 2022.

Practical Completion means, in relation to a building or work, the practical completion of the building or work as defined or described in the construction contract for that building or work.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

Public Benefits means the benefits to the community to be provided by the Developer in the form and at the times specified in Schedule 3, but, in Annexure A, does not include the Monetary Contribution.

Quantity Surveyor means a qualified independent and practising quantity surveyor with at least five years' experience in the assessment of building and construction costs.

Quantity Surveyor's Assessment means the assessment by the Quantity Surveyor of the cost to deliver the Developer's Works.

RAB (CEP) Act means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW).

RAB (CEP) Regulation means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020* (NSW).

Regulated Design means, in respect of the Developer's Works, a "regulated design" as that term is defined in the DBP Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Remediation Action Plan means a remediation action plan approved in connection with a Development Consent for any part of the Development.

Representative means each of the:

- (a) Developer's Representative;
- (b) City's Representative;
- (c) Minister's Representative; and
- (d) the representative of the Contractor as provided by the Contractor.

Road has the same meaning as "public road" under the *Roads Act 1993* (NSW) that is vested in the City and includes Road Reserves.

Road Reserve has the same meaning as "road related area" under the *Road Transport Act 2013* (NSW).

Standards means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 6 of Schedule 3.

Subdivision of Land has the same meaning as in the Act.

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Transfer Land means land forming part of the Public Benefits that is to be either dedicated or transferred to the City in accordance with Schedule 3 of this document.

Waterloo Estate (South) Design Guide means the document titled "Waterloo Estate (South): Design Guide 2022" dated November 2022 and published by the Department of Planning and Environment in November 2022.

Waterloo Estate (Central) Land means the land contained in the folio identifiers stated in Table 2 in Schedule 1.

Waterloo Estate (North) Land means the land contained in the folio identifiers stated in Table 3 in Schedule 1.

1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

- (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) A reference to **including** means "including, without limitation".
 - (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
 - (h) A reference to **this document** includes the agreement recorded by this document.
 - (i) Words defined in the GST Act have the same meaning in clauses about GST.
 - (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.
 - (k) Schedules and annexures to and of this document form part of this document.

1.3 **Application of this document if no Construction Certificate or Occupation Certificate required**

- (a) LAHC (being the Crown within the meaning of Part 6 of the Act) is to provide the City with a copy of each Crown Building Work Certificate that is issued with respect to the Development within 5 Business Days of its date of issue.
- (b) For the purposes of determining when rights and obligations under this document may be exercised or are required to be met if LAHC is the applicant for a Development Consent (or the person on whose behalf an application is made), LAHC is to advise the City and the Minister in writing when Practical Completion is achieved under a construction contract for any building or work that is part of the Development. LAHC is to provide the City with such information as it reasonably requests regarding the requirements for Practical Completion under a relevant contract.

2. **APPLICATION OF THE ACT AND THE REGULATION**

2.1 **Application of this document**

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

- (a) the Land;
- (b) the Instrument Change; and
- (c) the Development as it relates to the Land.

2.2 **Public Benefits to be made by Developer**

Clause 5, Schedule 3 and Annexure A set out the details of the:

- (a) Public Benefits to be delivered by the Developer in respect of the Development as it relates to the Land;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

2.3 **Application of sections 7.11, 7.12 and 7.24 of the Act and other contribution plans**

The application of sections 7.11, 7.12 and 7.24 of the Act is excluded to the extent set out in Item 5 of Schedule 2.

2.4 **The City's and the Minister's rights**

This document does not impose an obligation on the City or the Minister to:

- (a) grant Development Consent to the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

2.5 **Explanatory note**

The explanatory note prepared in accordance with clause 205 of the Regulation must not be used to assist in construing this document.

3. **OPERATION OF THIS PLANNING AGREEMENT**

3.1 **Commencement**

This document will commence on the date of execution of this document by all parties.

4. **WARRANTIES**

4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) (**power**) it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (**Authorisations**) it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) (**documents effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (**no controller**) no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 **Developer warranties**

- (a) The Developer warrants to the City and the Minister that, at the date of this document:
 - (i) it is the registered proprietor of the Land;
 - (ii) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;
 - (iii) all work performed by the Developer and the Personnel under this document 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 Developer's size and experience; and

- (iv) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (b) The Developer 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 this document in respect of that part.

5. PUBLIC BENEFITS

5.1 Developer to provide Public Benefits

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document.

5.2 Maintenance of Developer's Works

- (a) In this clause, the following definitions apply:

Maintain means works to bring an item to a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, but does not include removing graffiti or repairing any item damaged as a consequence of vandalism. **Maintained** and **Maintenance** have corresponding meanings;

Maintenance Period is the period of 12 months from the date on which the Developer's Works reach Completion;

Maintenance Schedule means the schedule of proposed Maintenance works as listed in Annexure A under the heading 'Maintenance of Developer's Works'.

- (b) The Developer's Works must be Maintained by the Developer during the Maintenance Period in accordance with the Maintenance Schedule.
- (c) The Developer must follow the City's Policies and obtain and comply with all Authorisations necessary to carry out the Maintenance required under this clause.
- (d) If:
 - (i) the Developer fails to materially comply with the approved Maintenance Schedule and does not rectify that failure within 15 Business Days of being notified of that failure by the City or within a reasonable period of time agreed between the parties; or
 - (ii) the City becomes aware of an item of the Developer's Works that requires urgent Maintenance to ensure public safety or avoid damage or loss to the public or property,

the City may, by itself, its employees, contractors or agents, carry out the required works and may recover as a debt due and owing to the City any difference between the amount of the Guarantee and the costs incurred by the City in carrying out the Maintenance work.

6. COMPLETION

6.1 Date of Completion

The Developer must ensure that the Developer's Works reach Completion on or before the date or milestone referred to in clause 1 of Schedule 3 of this document.

6.2 Staged development

- (a) The parties acknowledge that the Development may be Completed in Phases and that this document may be removed from the relevant land titles following each Phase Completion Date if all the Developer's obligations to provide the Public Benefits to the extent specified in the details provided under clause 6.2(b) with respect to that Phase have been met. The City will promptly provide such assistance reasonably required by the Developer to remove this document from the relevant land titles following each Phase Completion Date.
- (b) The Developer must give the City and the Minister details of the Phases including the extent of the Public Benefits to be delivered as part of each Phase as soon as reasonably practicable and must give the City and the Minister prior written notice of changes to the Phases.
- (c) The extent of Public Benefits delivered for each relevant Phase must ensure provision of:
 - (i) entire street frontage of each building site;
 - (ii) pedestrian and vehicle access to each site.

6.3 Developer completion notice

When, in the reasonable opinion of the Developer, the Developer's Works have reached Completion, and all hold points inspections (as required by clause 5.4 of Schedule 3) have been approved by the City, the Developer must notify the City's Representative in writing and must include in that notice:

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion;
- (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to assume responsibility for the Developer's Works; and
- (c) at least two sets of the "as built" drawings of the Developer's Works, including one set in electronic format, prepared in accordance with the City's Public Domain Manual and Technical Specifications or other policies as applicable,

(Completion Notice). For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Developer's Works (or different Phases as applicable). However, the Developer

must ensure that Completion is achieved for the Developer's Works before the due date specified in Item 1 of Schedule 3.

6.4 **Inspection by the City**

- (a) The City's Representative must inspect the Developer's Works within 5 Business Days of the date that the Completion Notice is received by the City. The City's Representative may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 6.3. Within 10 Business Days of the date of the inspection by the City's Representative, the City must by written notice to the Developer:
 - (i) state that Completion has been achieved; or
 - (ii) state that Completion has not been achieved and, if so, identify the Defects that, in the opinion of the City's Representative, acting reasonably, prevent Completion; or
 - (iii) issue a notice under clause 6.5(a), if it applies.
- (b) Nothing in this clause 6.4, or any notice issued under this clause 6.4, will:
 - (i) reduce or waive in any manner the Developer's responsibility to:
 - (A) deliver the Developer's Works in accordance with this document; or
 - (B) the Developer's responsibility to correct Defects, in accordance with this document, whether or not these are identified by the City; or
 - (ii) create any liability for the City in relation to any defective aspect of the Developer's Works.
- (c) Without limiting the application of clause 11 to any Dispute, if the City issues a notice pursuant to clause 6.4(a)(ii) and the Developer disputes that Completion has not been achieved, then the dispute resolution procedures in clause 11 apply.

6.5 **Non-completion of Public Benefits**

- (a) If the Developer makes a request by notice in writing not to complete the Public Benefits (or any part of the Public Benefits):
 - (i) the City may permit the Developer not to complete the Public Benefits (or any part of the Public Benefits) by issuing a notice in writing to the Developer stating that completion of the items identified in that notice is not required to fulfil the Developer's obligations under this document; and
 - (ii) the City may make a claim on the Guarantee in such amount as the City considers necessary to complete the portion of Public Benefits not being delivered by the Developer.

- (b) If the Developer fails to complete the whole of the Public Benefits in the form and to the standards required under the Development Consent or this document then the City may either:
- (i) complete the Public Benefits itself, including by exercising its right to compulsorily acquire the Transfer Land in accordance with clause 10.6; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document,
- and may recover all costs reasonably incurred for that work from the Developer. The City can claim on the Guarantee in order to exercise this right, in which case the provisions of clause 10 will apply. To the extent that the City's costs exceed the amount of the Guarantee, the City can recover this amount from the Developer as a debt due and owing to the City.
- (c) If the City exercises its rights under this clause 6.5 to complete the Public Benefits, the Developer grants the City a licence for the period necessary for the City to access the Land to carry out, or procure the carrying out, of the Public Benefits and to the extent the DBP Act or the RAB (CEP) Act applies to the Developer's Works, the Developer must provide all required assistance to the City to enable the City to comply with the DBP Act and the RAB (CEP) Act (as applicable).
- (d) If the City claims on the Guarantee under this clause 6.5, it agrees that, in completing the Public Benefits, it will comply with any relevant requirements relating to procurement in or under the *Local Government Act 1993* (NSW) and associated policies.

7. **INDEMNITY**

The 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 Developer (or any Personnel) in connection with the performance of the Developer's obligations under this document, except where the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).

8. **DEFECTS LIABILITY**

8.1 **Security for Defects Liability Period**

Until the expiry of the relevant Defects Liability Period, the City may retain from the Guarantee an amount equal to 10% of the Attributed Value of the Developer's Works as security for the Developer's performance of its obligations under this clause 8. The Developer must make any necessary arrangements to allow the provision of the Guarantee for the Defects Liability Period in accordance with this clause. The City must promptly return the balance of the Guarantee to the Developer after the updated Guarantee for the Defects Liability Period (as contemplated by this clause 8.1) has been provided to the City in accordance with clause 10.5.

8.2 Defect in the Developer's Works

- (a) If:
 - (i) the Developer is in breach of clause 4.2 of this document; or
 - (ii) there is a Defect within the Defects Liability Period,then, following written notice from the City, the Developer must promptly correct or replace (at the Developer's expense) the Defect.
- (b) If the Developer is unable or unwilling to comply with clause 8.2(a), or fails to rectify the Defect within three months of receiving notice from the City under clause 8.2(a) or such longer period as the City agrees is reasonably required by the Developer to rectify the Defect, the City may:
 - (i) rectify the Defect itself;
 - (ii) make a claim on the Guarantee in accordance with clause 10 for the reasonable costs of the City in rectifying the Defect; and
 - (iii) to the extent the costs incurred to rectify the Defect exceeds the Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the City.
- (c) If the City requires access to the Land to rectify any Defect, the Developer grants the City and its contractors a licence for such period for the City and its contractors to access the Land to carry out, or procure the carrying out, of the rectification works.

9. REGISTRATION AND CAVEAT

9.1 Registration of this document

- (a) Within 20 Business Days of receiving its copy of this document duly executed by all the parties, the Developer, must, at its own cost:
 - (i) obtain all consents to the registration of this document on the title to the Land;
 - (ii) lodge this document for registration on the title to the Land, including but not limited to producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and
 - (iii) act promptly in complying with and responding to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.
- (b) The Developer must provide the City and the Minister with evidence of lodgement of this document in accordance with clause 9.1(a)(ii) within 10 Business Days of such lodgement.
- (c) The Developer will provide the City and the Minister with a copy of the relevant title search(es) for the Land and a copy of the registered dealing

containing this document within 10 Business Days of registration of this document.

- (d) If the Developer fails to register this document in accordance with this clause 9.1 then the City may register its copy of the duly executed document at the Developer's cost and the Developer must promptly provide and do all things necessary to enable the City to do so.

9.2 **Caveat**

- (a) The City may, at any time after the date of this document and before this document is registered on title, register a caveat over the Land preventing any dealing with the Land that is inconsistent with this document. Provided that the City complies with this clause 9.2, the Developer must not object to the registration of this caveat.
- (b) In exercising its rights under this clause 9.2 the City must do all things reasonably required to:
 - (i) remove the caveat from the Land once this document has been registered on the certificate of title to the Land; and
 - (ii) consent to the registration of this document and any plan of consolidation, plan of subdivision or other dealing required by this document or the Development Consent.

9.3 **Release of this document**

If the City, acting reasonably, is satisfied that the Developer has provided all Public Benefits to the extent set out in details provided under clause 6.2(b) for a Phase and otherwise complied with this document, then the City, and if required, the Minister must promptly do all things reasonably required to remove this document from the relevant titles to the Land or part of the Land.

10. **ENFORCEMENT**

10.1 **Developer to provide Guarantee**

- (a) The Developer must deliver the Guarantee for the Guarantee Amount to the City by the Guarantee Amount Due Date.
- (b) The City will accept the Guarantee in stages or by multiple Guarantees equalling the relevant Guarantee Amount, as agreed by the parties.
- (c) While the Developer under this document is New South Wales Land and Housing Corporation the City agrees that the Guarantee may be provided by the Contractor in the form reasonably required by the City.

10.2 **Adjustment of Guarantee Amount**

- (a) Subject to clause 10.2(b), following each anniversary of the date of the Guarantee (the "Adjustment Date") and at any time prior to the expiry of the Defects Liability Period, the Guarantee Amount is to be adjusted to a revised amount by applying the following formula:

$$\mathbf{RGA} = \mathbf{GA} \times (\mathbf{A/B})$$

where:

RGA is the revised guarantee amount applicable from the relevant Adjustment Date

GA is the Guarantee Amount that is current on the relevant Adjustment Date

A is the Index Number most recently published before the relevant Adjustment Date

B is the Index Number most recently published:

- (i) before the date of the Guarantee for the first Adjustment Date; and
- (ii) before the preceding Adjustment Date for every subsequent Adjustment Date.

If after the formula is applied the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.

- (b) If the Guarantee Amount is adjusted under clause 10.2(a), the Developer is not required to provide the City with a replacement Guarantee for that revised Guarantee Amount until such time as the City notifies the Developer that the City is ready to exchange the then current Guarantee held by the City, following which the City and the Developer must promptly exchange the then current Guarantee held by the City with a replacement Guarantee for that revised Guarantee Amount from the Developer.

10.3 **Right of City to claim on Guarantee**

- (a) The Developer agrees that the City may make an appropriation from the Guarantee in such amount as the City, acting reasonably, thinks appropriate if:
 - (i) the Developer fails to comply with clause 4.2 of Schedule 3 (provision of detailed design drawings and detailed costs estimate);
 - (ii) the Developer fails to comply with clause 2 of Schedule 3 (payment of Monetary Contribution);
 - (iii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.5(a)(ii);
 - (iv) an Insolvency Event occurs in respect of the Developer or, if the Guarantee has been provided by the Contractor, the Contractor;
 - (v) the Developer fails to deliver the Public Benefits in accordance with clause 6.5(b);
 - (vi) the Developer fails to rectify a Defect in accordance with clause 8.2;

- (vii) the detailed designs for the Developer's Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate or Crown Building Work Certificate (as the case may require) that approves the construction of any structures above the ground floor of the Development;
 - (viii) the Developer's Works do not reach Completion within 36 months of the date of issue of the earlier of the first Construction Certificate in respect of the relevant Phase of the Development and the first Crown Building Work Certificate in respect of the relevant Phase of the Development (or such later time as agreed by the City in writing);
 - (ix) the Developer fails to maintain the Developer's Works in accordance with clause 5.2 and Annexure A;
 - (x) the City incurs any other expense or liability in exercising its rights and powers under this document;
 - (xi) to the extent the DBP Act applies to the Developer's Works, any Regulated Designs and Design Compliance Declarations for those Regulated Designs in relation to the Developer's Works are not procured by the Developer (or the Personnel) as required by the DBP Act or the DBP Regulation or otherwise not provided to the City as and when required by this document; or
 - (xii) to the extent the RAB (CEP) Act applies to the Developer's Works, the City incurs any other cost, expense or liability in exercising its rights to appeal or make representations under clause 5.5(a)(vi) of Schedule 3 or 5.5(b) of Schedule 3.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.3 must be applied only towards:
- (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document; and
 - (ii) carrying out any works required to achieve the Public Benefits.

10.4 **Expenditure by the City**

If the City claims on the Guarantee to Complete the Developer's Works, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or
- (b) may expend more than the Guarantee Amount. If the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer.

10.5 Top-up and return of Guarantee

- (a) If the City calls upon the Guarantee in accordance with this clause 10 then the Developer must immediately provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with clause 10.5(b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.
- (b) If:
 - (i) the monies secured by the Guarantee have not been expended;
 - (ii) the City has concurred with Completion, in accordance with clause 6.4(a)(i), taking into account any approved non-completion of Public Benefits approved under clause 6.5(a); and
 - (iii) the City has been provided with the security for the Defects Liability Period in accordance with clause 8.1,then the City will promptly return the Guarantee to the Developer following the issue of a notice pursuant to clause 6.4(a)(i).
- (c) If, following expiry of the Defects Liability Period, the City is satisfied that all defects have been rectified in accordance with clause 8 then the City must promptly return to the Developer the portion of the Guarantee retained by the City as security for the Defects Liability Period.

10.6 Compulsory acquisition

If the Developer fails to transfer or dedicate the Transfer Land or any land forming part of the Essential Infrastructure to the City in accordance with Schedule 3 of this document, then the City may compulsorily acquire that land for the amount of \$1.00 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW). The City and the Developer agree that:

- (a) this clause 10.6 is an agreement between the Developer and the City for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW);
- (b) in this clause 10.6 the Developer and the City have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and
- (c) the Developer must pay the City, promptly on demand, an amount equivalent to all costs incurred by the City in acquiring the whole or any part of the Transfer Land or land forming part of the Essential Infrastructure as contemplated by this clause 10.6.

11. DISPUTE RESOLUTION

11.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 11.

11.2 Negotiation

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Representatives of the parties relevant to the Dispute. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 11; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Representatives of the parties to the Dispute must meet at least once to attempt to resolve the Dispute.
- (c) The Representatives of the parties to the Dispute may meet more than once to resolve a Dispute. The Representatives of the parties to the Dispute may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.
- (d) The Minister's Representative is not required to participate in an attempt to resolve a Dispute between the Developer and the City under this clause 11 unless the Minister's Representative elects to do so. For that purpose, a copy of the relevant Dispute Notice is to be given to the Minister's Representative.

11.3 Not use information

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 11 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 11 for any purpose other than in an attempt to settle the Dispute.

11.4 **Failure to resolve**

- (a) If the Dispute is not resolved under clause 11.2 within 20 Business Days after the Dispute Notice is issued, the parties must appoint an independent expert to attempt to resolve the Dispute. If the parties do not agree on the independent expert to be appointed, the Minister may nominate the independent expert to be appointed by the parties.
- (b) The City and the Developer agree to brief the independent expert to prepare a written report providing the expert's opinion in relation to the Dispute. The City and the Developer agree to provide relevant documents and information to the expert for the purposes of the preparation of the report and each of them may make a submission to the expert concerning matters relevant to the Dispute. Any submission provided to the expert by either party must be provided contemporaneously to the other party. Nothing prevents the Minister from making a submission to the expert if the Minister's Representative elects to participate in the resolution of the Dispute, but any submission made by the Minister must also be provided to the City and the Developer.

11.5 **Condition precedent to litigation**

Subject to clause 11.6, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given;
- (b) the Resolution Period has expired; and
- (c) the Dispute has not been resolved within 30 Business Days after the independent expert has provided their report under clause 11.4.

11.6 **Summary or urgent relief**

Nothing in this clause 11 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

11.7 **Costs**

The parties agree to pay their own costs (including legal costs) in respect of the resolution of a Dispute under this clause 11. However, the City and the Developer agree to share equally the costs of engaging the independent expert under clause 11.4.

12. **TAXES AND GST**

12.1 **Responsibility for Taxes**

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.

- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 12.1(a).

12.2 **GST free supply**

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

12.3 **Supply subject to GST**

To the extent that clause 12.2 does not apply to a supply made under this document, this clause 12.3 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 12.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 12.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume that the City is not entitled to any input tax credit when calculating any amounts payable under this clause 12.3.
- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

13. DEALINGS

13.1 Dealing by the City

- (a) The City may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency and does not adversely affect the rights and obligations of the Developer under this document. The City must give the Developer notice of the Dealing within 5 Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

13.2 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 9, the Developer must not Deal with the Land without:
 - (i) the prior written consent of the City or the Minister (which must not be withheld if clause 13.2(a)(ii) is complied with); and
 - (ii) the City, the Minister, the Developer and the third party the subject of the Dealing entering into a Deed of Novation substantially in the terms set out in Annexure B (as amended to include other terms reasonably required by the City, the Minister and the Developer).
- (b) On and from registration of this document in accordance with clause 9:
 - (i) the Developer may Deal with the Land without the consent of the City or the Minister, but only in the following ways or as a result of the following:
 - (A) the sale of the whole of the Land (without subdivision);
 - (B) the sale of any part of the Land that is a strata lot (and not common property) subject to clause 13.2(b)(ii);
 - (C) the lease or licence of any part of the Land.
 - (ii) the Developer may register a strata plan of subdivision (within the meaning of the *Strata Schemes Development Act 2015*) for all or part of the Land, subject to this document, and although this document must remain registered on the title of the common property following registration of the strata plan (unless and until all relevant obligations under this document have been performed), the City and the Minister consent to it not being registered on the title of the strata lots created;
 - (iii) the Developer may enter into a development agreement with a Contractor for the development of all or part of the Land in accordance with the Instrument Change. If the Developer enters into a development agreement with the Contractor, the Developer may, as soon as practicable after the date of the development agreement, procure the Contractor to enter into a Deed of Accession with the

Developer, the City and the Minister in order for the Contractor to accept certain obligations of the Developer under this document. If so required by the Developer, the City and the Minister must promptly enter into the Deed of Accession (as amended to include other terms reasonably required by the City, the Minister and the Developer). In the event that the development agreement with the Contractor is terminated, the Developer may request that the City and the Minister enter into a Deed of Accession with a replacement contractor, and the City and the Minister will promptly execute such a deed (as amended to include other terms reasonably required by the City, the Minister and the Developer); and

- (iv) the Developer must not deal with this document to a third party except in accordance with clause 13.2(b)(i) or (iii) without:
 - (A) the prior written consent of the City and the Minister; and
 - (B) if required by the City, the Developer and the Minister and the third party the subject of the Dealing entering into a deed of novation to the Dealing (or other deed relevant to the type of Dealing) on terms acceptable to the City and the Minister, both acting reasonably.
- (c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.
- (d) Nothing in this clause 13 prevents the parties entering into a deed of novation, including provisions to release and discharge a party from obligations under this document, in circumstances other than those set out in the clause.

13.3 **Extinguishment or creation of interests on Transfer Land**

- (a) Prior to the dedication or transfer of the Transfer Land to the City, the Developer must:
 - (i) extinguish all leases and licences over the Transfer Land; and
 - (ii) use its best endeavours to extinguish all redundant encumbrances and those that, in the City's opinion, would unreasonably impede the intended use of all or any part of the Transfer Land.
- (b) The Developer must comply with any directions by the City relating to the Transfer Land, including but not limited to the creation of any encumbrances over the Transfer Land.

14. **TERMINATION**

- (a) The City, the Developer and the Minister may terminate this document by agreement in writing after the Instrument Change is made:
 - (i) if the Instrument Change is subsequently amended by an environmental planning instrument in a way that prevents the

Developer, acting reasonably, from proceeding with the Development;
or

- (ii) if the Instrument Change is declared to be invalid by a court of competent jurisdiction.
- (b) If this document is terminated under clause 14(a), then:
- (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss each party may suffer as a result of the termination of this document;
 - (iii) the City will return the Guarantee to the Developer after first deducting any amounts owed to the City or costs incurred by the City by operation of this document. If in exercising its rights under this document (provided that such rights have arisen prior to the termination of this document) the City has expended more money than the Guarantee Amount, then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer; and
 - (iv) the City and the Minister will, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land.

Note. It is acknowledged by the parties that it is possible that the Development may be partially progressed at the time that the termination right in clause 14(a) arises and that the Public Benefits associated with the part of the Development which has been completed or has commenced may or may not have been delivered in accordance with this document at that time. In this case, the parties note that an agreement between the parties to terminate this document will need to include provisions relating to obligations (if any) following termination to provide the Public Benefits referable to the portion of the Development which has been completed or which has commenced at that time and a mechanism for adjustment of the "credit" and "top up" monetary contributions amounts in Part F of Annexure A. The parties note that this will depend on the extent to which the Development has progressed relative to the Public Benefits under this document being required for the whole of the Development (ie. that the Public Benefits under this document assume the whole of the Development will be completed whereas, in this case, only part of the Development will have been completed and only part of the Public Benefits may need to be provided depending on the particular circumstances). The parties agree that the adjustment will, so far as possible, apply the principles set out in Part F of Annexure A.

15. **CONFIDENTIALITY AND DISCLOSURES**

15.1 **Use and disclosure of Confidential Information**

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clause 15.2 or 15.3.

15.2 **Disclosures to personnel and advisers**

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 15.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 15.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 15.2(b)(i).

15.3 **Disclosures required by law**

- (a) Subject to clause 15.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 15.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately if it anticipates that it may be required to disclose any of the Confidential Information;

- (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
- (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

15.4 **Receiving party's return or destruction of documents**

Except to the extent that the law (including the *State Records Act 1998* (NSW)) prohibits a receiving party from doing so, on termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

15.5 **Security and control**

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

15.6 **Media releases**

- (a) The Developer and its Personnel must not issue any information, publication, document or article which refers to the City, for publication in any media concerning this document or the Public Benefits without the City's prior written consent, such consent not to be unreasonably withheld or delayed. The Developer must include this requirement in any agreement with the Contractor. For the avoidance of doubt:
 - (i) the City consents to the Developer and its Personnel issuing information, publications, documents or articles that refer objectively to the subject matter of this document, the Development or the Public Benefits without first obtaining the City's written consent; and
 - (ii) such information, publications, documents or articles must not refer to the City in a negative or derogatory way.
- (b) This paragraph (b) applies only while LAHC is the Developer. The City (being the office of the Council of the City of Sydney but excluding the Lord Mayor, Deputy Lord Mayor, Mayor and councillors of the Council of the City of

Sydney) must not issue any information, publication, document or article which refers to the Developer, or the Minister, for publication in any media concerning this document or the Public Benefits without the Developer's prior written consent or the Minister's prior written consent (as the case may require), such consent not to be unreasonably withheld or delayed.

- (c) This clause 15.6 is subject to clause 17.14.

16. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00 pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and email address are those set out in Schedule 1 for each Representative, or as the person notifies the sender in writing from time to time.

17. **GENERAL**

17.1 **Governing law**

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

17.2 **Access to information**

In accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Developer agrees to allow the City immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

17.3 **Liability for expenses**

- (a) Each party (other than the City) must pay its own costs and expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) Subject to clause 17.3(c), the Developer must pay for all the City's reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulation (and for any consent the City is required to provide under this document).
- (c) The Developer must pay the following costs and expenses of the City:
 - (i) the City's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this document, up to the amount of \$5,500 (GST incl);
 - (ii) reimbursement of costs associated with the preparation and execution of a planning agreement, being a fee of \$880;
 - (iii) any costs incurred by the City in registering this document or removing it from title;
 - (iv) any costs and expenses reasonably incurred in enforcing this document, including legal costs.

17.4 **Relationship of parties**

- (a) Nothing in this document 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.

17.5 **Giving effect to this document**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

17.6 **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 document,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 5:00 pm on the specified day, it is taken to have been done on the following Business Day.

17.7 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 document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

17.8 Preservation of existing rights

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

17.9 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 document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

17.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

17.11 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

17.12 **Operation of indemnities**

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

17.13 **Inconsistency with other documents**

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

17.14 **No fetter**

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

17.15 **Counterparts**

This document may be executed in counterparts.

17.16 **Electronic execution**

- (a) Each party consents to this document and any variations of this document being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this document or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this document and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the document;
 - (ii) insertion of the person's name on to the document; or
 - (iii) use of a stylus or touch finger or a touch screen to sign the document,

provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the document;

- (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the document; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this document and that electronic signing of this document by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this document transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this document for all purposes.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	The land contained in the folio identifiers stated in Table 1 in this Schedule 1.
2.	Development	<p>A development of Waterloo Estate (South), as put forward in the Planning Proposal and authorised by the Instrument Change, on the Land and within the area shown in the plan in Annexure A and proposed by the Developer to be the subject of a Concept Development Application.</p> <p>The Development may be completed in Phases and will substantially reflect the proposed development as set out in the Planning Proposal consistent with the Instrument Change (namely a mixed-use development including retail, commercial and residential apartments (including social and affordable housing), new public infrastructure for roads, footpaths, through site links and parks and community facility land uses) (Proposed Development).</p> <p>The total Gross Floor Area of the Proposed Development on the Land under the LEP is 255,000 m² in accordance with the Planning Proposal and any additional design excellence floor space achieved under clause 6.21 of the LEP.</p>
3.	City's Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email: giahn@cityofsydney.nsw.gov.au</p>
4.	Minister's Representative	<p>Name: The Secretary</p> <p>Address: Level 11, 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150</p> <p>Email: planningagreements@planning.nsw.gov.au</p>

5.	Developer's Representative	<p>Name: Director, Major Projects</p> <p>Address: 4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150</p> <p>Email: waterloo@facns.nsw.gov.au</p>
6.	Development Application	Any development application or State significant development application submitted to the relevant consent authority in connection with the Development.
7.	Guarantee Amount	<p>1. An amount equal to 100% of the Attributed Value of the Developer's Works for the Embellishment of Road Reserves for a Phase - to be provided before the issue of first Construction Certificate or Crown Building Work Certificate for the Developer's Works (whichever type may be the first issued).</p> <p>2. For the Embellishment of Public Open Space, an amount equal to:</p> <ul style="list-style-type: none"> • <u>Stage 1</u>: 25% of the Attributed Value of the Developer's Works (or 25% of the Attributed Value of the remainder of the Developer's Works to the extent paragraph 4 below has been applied) for the Embellishment of Public Open Space - to be provided before an Occupation Certificate is issued that will result in the occupation and use of at least 25% of the Gross Floor Area of the Development being authorised, or, if an Occupation Certificate is not required for the occupation and use of the first 25% of the Gross Floor Area of the Development, before Practical Completion of no more than 25% of the Gross Floor Area of the Development (Stage 1 Milestone). • <u>Stage 2</u>: 75% of the Attributed Value of the Developer's Works (or 75% of the Attributed Value of the remainder of the Developer's Works to the extent paragraph 4 below has been applied) for the Embellishment of Public Open Space - to be provided before the first Construction Certificate or the first Crown Building Work Certificate (as the case may require) for the works is issued (Stage 2 Milestone).

	<p>3. For the Community Facilities an amount equal to:</p> <ul style="list-style-type: none"> • <u>Stage 1</u>: 25% of the Attributed Value of the Developer's Works (or 25% of the Attributed Value of the remainder of the Developer's Works to the extent paragraph 4 below has been applied) for the Community Facilities - to be provided before an Occupation Certificate is issued that will result in the occupation and use of at least 25% of the Gross Floor Area of the Development being authorised, or, if an Occupation Certificate is not required for the occupation and use of the first 25% of the Gross Floor Area of the Development, before Practical Completion of no more than 25% of the Gross Floor Area of the Development (Stage 1 Milestone). • <u>Stage 2</u>: 75% of the Attributed Value of the Developer's Works (or 75% of the Attributed Value of the remainder of the Developer's Works to the extent paragraph 4 below has been applied) for the Community Facility - to be provided before the first Construction Certificate or the first Crown Building Work Certificate (as the case may require) for the works is issued (Stage 2 Milestone). <p>4. If a portion of the Developer's Works for the Embellishment of Public Open Space or Community Facilities, respectively, is to be completed prior to the relevant Stage 1 Milestone, an amount equal to 100% of the Attributed Value of that portion of the Developer's Works must be provided prior to the issue of the first Construction Certificate or the first Crown Building Work Certificate (as the case may require) for that portion of work. A guarantee for the remainder of the Developer's Works for the Embellishment of Public Open Space or Community Facilities, as the case may be, must be provided in accordance with the process outlined in paragraphs 2 and 3 above.</p> <p>For the purpose of determining the Attributed Value of the portion of the Developer's Works concerned, the City and the Developer are to have regard to the Attributed Value of the Developer's Works, determined under Part E of Annexure A.</p> <p>5. For the purpose of determining the Gross Floor Area of the Development, clause 1.3 of Schedule 3 is to be applied.</p>
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		6. Subject to paragraph 4, the guarantee amount for the Stage 2 Milestone does not need to be provided until the Stage 1 Milestone has occurred.
8.	Guarantee Amount Due Date	As specified in Item 7.

TABLE 1: PLANNING PROPOSAL: WATERLOO ESTATE (SOUTH) LAND

ADDRESS	LOT / DEPOSITED PLAN	OWNER
1. 117 Wellington Street, 123 Wellington Street, 104 Raglan Steet, 87-95 Cooper Street, 209 Cope Street, 213-219 Cooper Street, Waterloo	Lot 1 DP 217386	NSW Land and Housing Corporation
2. N/A	Lot 3 DP 217386	NSW Land and Housing Corporation
3. 238-246 George Street, 100-102 Raglan Street, 113 Wellington Street, 46-54 Cooper Street, Waterloo	Lot 1 DP 225159	NSW Land and Housing Corporation
4. 229-231 Cope Street, Waterloo	Lot 3 DP 10721	NSW Land and Housing Corporation
5. 6 John Street, Waterloo	Lot 1 DP 533762	NSW Land and Housing Corporation
6. 97-109 Cooper Street, Waterloo	Lot A DP 105916 Lot B DP 105916 Lot C DP 105916 Lot 14 DP 10721	NSW Land and Housing Corporation
7. 248-254 George Street, Waterloo	Lot 2 DP 533678	NSW Land and Housing Corporation
8. 232 Pitt Street, Waterloo	Lot 10 DP 635663	NSW Land and Housing Corporation
9. 104 Wellington Street, Waterloo	Lot 11 DP 635663	
10. 74-76 Wellington Street, Waterloo	Lot 1 DP 224728	NSW Land and Housing Corporation
11. 331 George Street, 240 Pitt Street, 8 John Street, Waterloo	Lot 3 DP 533680	NSW Land and Housing Corporation
12. 247-251 Cope Street, Waterloo	Lot 1 DP 533679	NSW Land and Housing Corporation
13. 339-341 George Street, Waterloo	Lot 1 DP 77168	NSW Land and Housing Corporation

ADDRESS	LOT / DEPOSITED PLAN	OWNER
14. 250 Pitt Street, Waterloo	Lot 313 DP 606576	NSW Land and Housing Corporation

TABLE 2: WATERLOO ESTATE (CENTRAL) LAND

ADDRESS	LOT / DEPOSITED PLAN	OWNER
1. 200-232 Pitt Street, Waterloo	Lot 1 DP 549940	NSW Land and Housing Corporation
2. N/A	Lot 2 DP 549940	NSW Land and Housing Corporation

TABLE 3: WATERLOO ESTATE (NORTH) LAND

ADDRESS	LOT / DEPOSITED PLAN	OWNER
1. 149 Cope Street, Waterloo	Lot 1 DP 233910 Lot 3 DP 233910 Lot 4 DP 233910	NSW Land and Housing Corporation
2. N/A	Lot 33 DP 548507	NSW Land and Housing Corporation
3. 1 Phillip Street, Waterloo	Lot 1 DP 1280794	NSW Land and Housing Corporation
4. Phillip Street, Waterloo	Lot 1 DP 597698 Lot 2 DP 597698 Lot 3 DP 597698 Lot 4 DP 597698	NSW Land and Housing Corporation
5. 180 Pitt Street, Waterloo	Lot 1 DP 538524 Lot 2 DP 538524	NSW Land and Housing Corporation

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</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; or</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) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
2.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	<p>Item 1 of Schedule 1.</p>
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p>	<p>The development to which this document applies is the development described in Item 2 of Schedule 1.</p> <p>The change to an environmental planning instrument to which this document applies is the Instrument Change, being an amendment to the LEP, as referred to in clause 1.1.</p>
4.	<p>The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p>	<p>Schedule 3 and Annexure A.</p>
5.	<p>Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)</p>	<p>Yes - The application of section 7.11 to the Development is excluded and accordingly no contributions under section 7.11 can be imposed in respect of the Development.</p> <p>Yes - The application of section 7.12 to the Development is excluded and accordingly no</p>

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
		levies under section 7.12 can be imposed in respect of the Development. No – The application of section 7.24 to the Development is not excluded.
6.	Consideration of benefits under this document if the application of section 7.11 to the Development is not excluded (section 7.4(3)(e) of the Act)	N/A
7.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 11
8.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 10
9.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
10.	Registration of this document (section 7.6 of the Act)	Clause 9
11.	Whether certain requirements of this document must be complied with before a construction certificate is issued (section 21 <u>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</u>)	Developer to deliver each Guarantee from the Contractor for the Guarantee Amount on each Guarantee Amount Due Date (refer clause 10 and Items 7 and 8 of Schedule 1). Developer to provide Additional Monetary Contribution as referred to in Part F of Annexure A before the issue of next Construction Certificate for any development on Waterloo Estate (North) Land or Waterloo Estate (Central) Land.
12.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (section 6.15(1)(d) of the Act)	Completion of Developer's Works for each Phase of the Development.
13.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (section 48 <u>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</u>)	Completion of Developer's Works and the transfer of the Transfer Land for each Phase of the Development as required by Schedule 3. Developer to provide a guarantee, being the "Stage 1" guarantee referred to in Item 7 of Schedule 1, before the issue of the occupation certificate specified in that item.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
14.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (section 205(5) of the Regulation)	Clause 2.5

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS – OVERVIEW

1.1 Works and Land

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

	Public Benefit	Attributed Value	Due date	Additional specifications
1.	MONETARY CONTRIBUTION	See Part F(k) of Annexure A	As specified in Part F(k) of Annexure A	
2.	TRANSFER LAND			
(a)	New Road Reserves	Nil	For each relevant Phase, prior to the first Occupation Certificate in relation to a building in that Phase, to ensure provision of: a. entire street frontage of each building site; b. pedestrian and vehicle access to each site.	The area identified in the Planning Proposal. Plans showing the indicative location of the Transfer Land are contained in Annexure A to this document.
(b)	Public Open Space	\$200 per m ² (as at September 2015 plus any adjustment for CPI indexation)	Prior to the issue of an Occupation Certificate for a building, or any part of a building, where the occupation and use of at least 50% of the Gross Floor Area of the Development will be authorised as a result of the issue of the certificate.	Area: 21,000m ² approximately to form one large park and one small park This land will be located in accordance with the planning controls and the Waterloo Estate (South) Design Guide unless otherwise agreed by the City and the Developer. Plans showing the indicative location of the Transfer Land are contained in Annexure A to this document. Note 1: Future contribution rates for this kind of Public Benefit are not bound by the rate applicable for Public Open Space in this document.

	Public Benefit	Attributed Value	Due date	Additional specifications
(c)	Community Facilities	Nil	Prior to the issue of an Occupation Certificate for a building, or part of a building, where the occupation and use of at least 75% of the Gross Floor Area of the Development will be authorised as a result of the issue of the certificate.	Provision of land component for Community Facilities at no cost. The location of the Community Facilities to be agreed by the parties across no more than 2 separate locations on the Land unless otherwise agreed by the City and the Developer.
3.	DEVELOPER'S WORKS			
(a)	Embellishment of Public Open Space	An amount which is equal to the Attributed Value of the Developer's Works as determined pursuant to clause 4.2 of Schedule 3 and Part E of Annexure A.	Prior to the issue of an Occupation Certificate for a building, or part of a building, where the occupation and use of at least 50% of the Gross Floor Area of the Development will be authorised as a result of the issue of the certificate.	Area: 23,600m ² approximately. Note 1: quantity to include any road closures. Note 2: final offset value to be determined by Quantity Surveyor in accordance with clause 4.2 of Schedule 3 and Part E of Annexure A.
(b)	Community Facilities	An amount which is equal to the Attributed Value of the Developer's Works as determined pursuant to clause 4.2 of Schedule 3 and Part E of Annexure A.	Prior to the issue of an Occupation Certificate for a building, or part of a building, where the occupation and use of at least 75% of the Gross Floor Area of the Development will be authorised as a result of the issue of the certificate.	Approximately 2,400 per m ² . Plans and specifications showing the nature and extent of community facilities as at the date of this document are contained in Annexure A to this document. The City and the Developer will agree on a process for the development of the design of the Community Facilities at the target budget in accordance with clause 4.1(a) of Schedule 3 and the design processes set out in Annexure A. Note: Final offset value to be determined by Quantity

	Public Benefit	Attributed Value	Due date	Additional specifications
				Surveyor in accordance with clause 4.2 of Schedule 3 and Part E of Annexure A.
(c)	Essential Infrastructure - Embellishment of Road Reserves	Nil (except for the purpose of determining the Guarantee Amount/s as referred to in Item 7 of Schedule 1 – see clause 4.2 of Schedule 3 and Part E of Annexure A for the determination of the Attributed Value).	For each Phase, prior to the first Occupation Certificate in relation to a building in that Phase, to ensure provision of: <ul style="list-style-type: none"> a. entire street frontage of each site; b. pedestrian and vehicle access to each site. 	All road reserves must be constructed in accordance with the Design Guide, and the City of Sydney streets code, lighting code and technical specification referred to in clause 6 of Schedule 3. Road carriage way works to existing road reserves will be limited to the extent of "make good". Except where Australian Standards and/or flood management requires an adjustment of road levels and/or upgrade of storm water system. Additional requirements are contained in Annexure A to this document.

1.2 **Timing of delivery of Public Benefits if Occupation Certificates not required**

If an Occupation Certificate is not required for any building or part of a building referred to in the table at clause 1.1 because it has been erected by or on behalf of the Crown, the Developer undertakes to provide each item of Transfer Land or Developer's Works specified in the table as follows:

- (a) in the case of the Road Reserves and their embellishment (referred to in Items 2(a) and 3(c) respectively of the table) – before Practical Completion of the first building in the relevant Phase or as otherwise agreed by the parties;
- (b) in any other case – before Practical Completion of a building, or part of a building, that will result in the relevant percentage specified next to the relevant item in the table (being either 50% or 75%) of the Gross Floor Area of the Development being achieved.

1.3 **Interpretation of table at clause 1.1**

For the purposes of the table at clause 1.1, the Gross Floor Area of the Development is the Gross Floor Area of buildings that any development consent to a Concept Development Application for the development of the whole of the

Land authorises to be erected or that development consents, considered together and applying across the whole of the Land, authorise to be erected (as the case may require). In the absence of any such consent or consents, the Gross Floor Area of the Development is the maximum Gross Floor Area permitted on the Land as a result of the Instrument Change.

2. **PAYMENT OF MONETARY CONTRIBUTION**

2.1 **Payment**

See Part F(k) of Annexure A.

2.2 **Indexation**

See Part F of Annexure A.

2.3 **No trust**

Not used.

2.4 **Expenditure by the City**

Not used.

3. **TRANSFER LAND**

3.1 **Dedication of land – decision**

Subject to clause 6.4 and clause 8.2, the Developer must, at its cost, take all steps required to transfer the Transfer Land to the City by the due date specified in clause 1 of this Schedule 3. As part of this obligation, the Developer must confirm with the City whether the Transfer Land is to be:

- (a) dedicated to the City on registration of a plan of subdivision; or
- (b) transferred to the City on registration of a transfer instrument.

3.2 **Obligations on dedication**

The requirement for the Developer to dedicate the Transfer Land to the City is satisfied where a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW) or creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW).

3.3 **Obligations on transfer**

- (a) The requirement for the Developer to transfer the Transfer Land to the City is satisfied where:
 - (i) the City is given an instrument in registrable form under the *Real Property Act 1900* (NSW) duly executed by the Developer, or the relevant registered proprietor, as transferor that is effective to transfer the title to the Transfer Land to the City when executed by the City as transferee and registered;

- (ii) a PEXA workspace has been set-up with respect to the transfer and all required parties are present in the workspace;
 - (iii) all required written consents for registration have been provided to the City and uploaded into PEXA;
 - (iv) the Transfer has been lodged in PEXA at the Developer's cost; and
 - (v) the Developer has provided the City and the Department with a title search(es) for the Transfer Land showing the City as the registered proprietor of the Transfer Land.
- (b) The Developer and the City are required to do all things reasonably necessary to enable registration of the instrument of transfer to occur, including signing and lodging the Transfer for registration in PEXA and responding to any requisitions from the NSW Land Registry Services.
- (c) The Developer must ensure that the Transfer Land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and charges) except for any encumbrances agreed in writing by the City in its absolute discretion.
- (d) The Developer undertakes to provide a warranty to the City prior to Transfer that all works carried out on the Transfer Land have been completed in accordance with any applicable Remediation Action Plan and no further Contamination of the Transfer Land has occurred since completion of the applicable Remediation Action Plan which would make the Transfer Land not suitable for the use of the Transfer Land for the Public Benefits or is inconsistent with the Remediation Action Plan.
- (e) The Developer indemnifies and agrees to keep indemnified the City against all claims made against the City as a result of any Contamination in, over, under or migrating from the whole or any part of the Transfer Land but only in relation to Contamination that existed on or before the Transfer Date, excluding any claim arising from:
- (i) a wilful or negligent act or omission of the City (including its agents and contractors) before or after the Transfer Date in respect of the Contamination in, on, over or under the Transfer Land;
 - (ii) exacerbation or disturbance of the Contamination in, over, under or migrating from the whole or any part of the Transfer Land occurring after the Transfer Date;
 - (iii) change of use of the Transfer Land after Transfer Date from the use of the Transfer Land as at the Transfer Date;
 - (iv) development of the Transfer Land occurring after the Transfer Date;
or
 - (v) a claim made by an agent or contractor of the City.

- (f) The Developer warrants that as at the date of this document the Transfer Land is not subject to any Adverse Affectation and warrants as to those matters in Schedule 2 of the *Conveyancing (Sale of Land) Regulation 2022* (NSW), unless otherwise notified to and agreed by the City in writing in its absolute discretion.

4. **FINAL DESIGN OF THE DEVELOPER'S WORKS**

4.1 **Scope of Developer's Works**

As at the date of this document, the nature and extent of the required Developer's Works is set out in Annexure A to this document. The parties agree that further design refinement of the Developer's Works may be necessary, having regard to:

- (a) the design processes set out in Annexure A;
- (b) the extent to which the design of the Developer's Works has been approved by the City;
- (c) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document;
- (d) the extent of any refinement of the design of the Developer's Works permitted by this clause 4.1 of Schedule 3;
- (e) any modification to the Development Consent made and approved under section 4.55 of the Act or any other development consent granted that relates to the Developer's Works;
- (f) to the extent the DBP Act applies to the Developer's Works:
 - (i) any refinement of the Regulated Designs for the Developer's Works required to ensure compliance with the DBP Act or DBP Regulation and to enable Design Compliance Declarations to be issued in respect of those Regulated Designs; and
 - (ii) any refinement of the Regulated Designs for the Developer's Works required to enable those Regulated Designs to be Construction Issued Regulated Designs and to enable Design Compliance Declarations to be made in respect of those Construction Issued Regulated Designs; and
- (g) the reasonable requirements of the City, including in regard to the Standards.

4.2 **Final design of Developer's Works**

- (a) The Developer must give prior written notice to the City at least 2 years prior to the lodgement of Development Application relating to the Public Open Space and the Community Facilities for the purposes of Part D and Part E in Annexure A, including the proposed location of the Community Facilities. Following receipt of this notice the City will either prepare the public domain and civil concept plans for the Public Open Space or the performance brief for the Community Facilities (as applicable) in accordance with Part D of

Annexure A. For the avoidance of doubt a reference to a Development Application does not include the Concept Development Application unless it includes a Stage 1 detailed Development Application for the Public Open Space or Community Facilities.

- (b) Prior to or at the same time as the Developer submits a Development Application for a Phase, the Developer must submit to the City's Representative for approval:
 - (i) detailed design drawings of the Developer's Works based on the public domain and civil concept plans for the Public Open Space or the performance brief for the Community Facilities (as applicable) provided by the City under Part D of Annexure A and that reflect the plans and specifications for that Phase and the design budget set out in Annexure A; and
 - (ii) to the extent the DBP Act or the DBP Regulation apply to the Developer's Works, the Regulated Designs and the Design Compliance Declarations for those Regulated Designs; and
 - (iii) a detailed costs estimate (certified by a Quantity Surveyor) setting out the estimated cost of the Developer's Works.
- (c) Within 30 Business Days after the City's Representative has received the detailed design drawings and detailed costs estimate, the City will inform the Developer in writing as to whether the detailed design drawings and costs estimate are approved. If the detailed design drawings or costs estimate are not approved, the City will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the required information, following which the process outlined in this paragraph (c) will apply again. The City must act reasonably in exercising its approval rights under this paragraph (c) and consistently with Part D of Annexure A.
- (d) Regarding the costs estimate, the Developer agrees that the City (acting in accordance with Parts D and E of Annexure A) may:
 - (i) reject items included within the Developer's Quantity Surveyor's Assessment which are not directly related to the Developer's Works;
 - (ii) require substantiation for the costs of items where the amount estimated is considered by the City to be excessive; or
 - (iii) require an adjustment to the costs estimate to reflect a variation to the design required under clause 4.2(c) of Schedule 3.
- (e) If the Developer:
 - (i) fails to prepare the detailed design drawings or detailed costs estimate; or
 - (ii) fails to provide the Regulated Designs and Design Compliance Declarations referred to in clause 4.2(b)(ii) of Schedule 3 (if applicable); or

- (iii) does not provide further information or modify the detailed design drawings or detailed costs estimate,

in accordance with this clause 4.2 of Schedule 3, then the City may exercise its rights under clause 10 in order to carry out the Developer's Works itself at the cost of the Developer.

- (f) The Developer agrees that the value of the Developer's Works may be adjusted, in accordance with Part E(e) of Annexure A, following completion of the process set out in this clause 4.2 of Schedule 3 provided that (other than provided for in clause 4.2(g)) the estimated cost of completing the Developer's Works does not exceed the design budget set out in Part D of Annexure A and as adjusted under Part E(e) of Annexure A. The parties agree that the Guarantee Amounts under this document is the Attributed Value as determined under Part E of Annexure A, subject to clause 4.2(e) of Schedule 3.
- (g) If the value of the Developer's Works as determined by the Quantity Surveyor(s) under Part E(c) or Part E(d) of Annexure A exceeds the design budget agreed for Public Open Space or Community Facilities (as applicable) under Part D of Annexure A, then the Developer and the City must work together to identify the reduction of the scope of the design under paragraphs (a), (b) and (c) for relevant Developer's Works to bring the value of the Developer's Works within the design budget in Part D of Annexure A and the process in clauses 4.2(a)-(f) will re-apply in respect of the amended design for the reduced scope.
- (h) The Developer acknowledges that the scope of the Developer's Works (determined under clause 4.2(c) or clause 4.2(g) of Schedule 3) will not change or reduce once the scope has been agreed between the City and the Developer, even if the actual costs required to complete those works is greater than the amount estimated at the date of this document.

4.3 **Preparation of and changes to construction design drawings**

- (a) Following approval of the detailed design drawings by the City in accordance with clause 4.2 of Schedule 3, the Developer must promptly:
 - (i) prepare construction design drawings that comply with the detailed design drawings;
 - (ii) to the extent the DBP Act or the DBP Regulation apply to the Developer's Works, prepare all necessary Construction Issued Regulated Designs and obtain Design Compliance Declarations for those Constructions Issued Regulated Designs; and
 - (iii) provide the City with a copy of the construction design drawings and the designs and documents referred to in clause 4.3(a)(ii) of Schedule 3.
- (b) The City, acting reasonably, may by written notice to the Developer at any time, approve, vary or direct the Developer to vary the construction design drawings so that the Developer's Works reflect:

- (i) the Standards;
 - (ii) a departure or discrepancy from the plans approved under clause 4.2 of Schedule 3; or
 - (iii) any other standard or specification for materials or methodology for carrying out works that is adopted by the City from time to time, provided that any direction given under this clause 4.3(b)(iii) of Schedule 3 does not significantly increase:
 - (A) the cost of that element of the Developer's Works; or
 - (B) the complexity of implementation of the Developer's Works that may lead to a significant delay in the completion of the Developer's Works.
- (c) Within 20 Business Days of receiving a notice from the City under clause 4.3(b) of Schedule 3, the Developer must:
- (i) to the extent practicable, use reasonable endeavours to comply with the notice given by the City; or
 - (ii) if the Developer determines that the notice given by the City is unreasonable or impracticable, notify a Dispute in accordance with clause 11.

If the Developer does not provide any response during the 20 Business Days after receiving a notice from the City under clause 4.3(b) of Schedule 3, the Developer is taken to accept the notice given by the City and will take all steps required to comply with the notice.

- (d) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under this clause 4.3 of Schedule 3 or for any errors, omissions or non-compliance with this document.
- (e) No participation by the City in the development of, the review of, or comments on any design drawings submitted by the Developer will lessen or otherwise affect the Developer's obligations under this document or constitute an acknowledgement by the City that the Developer has complied with its obligations under this document.

5. **CONSTRUCTION OF DEVELOPER'S WORKS**

5.1 **Insurance**

- (a) From commencement of the Developer's Works until expiration of the Defects Liability Period, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:

- (i) worker's compensation insurance or registrations as required by Laws;
 - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20 million covering all aspects of the Developer's Works;
 - (iii) construction works insurance in relation to the Developer's Works; and
 - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the City:
- (i) prior to commencing construction of the Developer's Works; and
 - (ii) promptly following a written request by the City, provided that such a request is not made more than twice in any 12 month period.

5.2 Approvals and consents

The Developer must, at its cost, obtain all relevant approvals and consents for the Developer's Works, whether from the City or from any other relevant Government Agency, including any necessary road opening permits. Before commencing the Developer's Works, the Developer must give to the City copies of all approvals and consents for the Developer's Works, other than the Development Consent.

5.3 Construction work

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works, including any approval given by the City under this document;
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use;
- (c) ensure that the Developer's Works are Complete by the due date specified in clause 1 of Schedule 3 and promptly after becoming aware advise the City's Representative of any significant delays in completing the Developer's Works or delays that may impact the delivery of the Public Benefits by the due date specified in Item 1 of Schedule 3; and
- (d) comply with all reasonable directions of the City in respect to construction of the Developer's Works.

5.4 Inspections by the City

The City, as a party to this document and not in its role as a Government Agency, will:

- (a) issue a set of hold points with the approval of the Plans under clause 4.2 of Schedule 3;

- (b) inspect the Developer's Works in accordance with the hold points during the course of construction at reasonable times and on reasonable notice; and
- (c) notify the Developer's Representative of any material or significant Defect relating to the construction or installation of the Developer's Works identified during or as the result of an inspection.

All hold point inspections must be adhered to during construction. Any failure by the City to identify a Defect will not be construed as amounting to an acceptance by the City of the Defect.

5.5 **RAB (CEP) Act**

This clause 5.5 (other than this sentence) applies only to the extent that the RAB (CEP) Act or the RAB (CEP) Regulation applies to the Developer's Works.

- (a) Without limiting any other obligation of the Developer, the Developer:
 - (i) must ensure that the Developer and its Personnel and their respective employees and agents:
 - (A) comply with the RAB (CEP) Act and the RAB (CEP) Regulation;
 - (B) do not cause the City to contravene the RAB (CEP) Act or the RAB (CEP) Regulation;
 - (C) do not carry out the Developer's Works in a manner that results in, or could result in:
 - (aa) a serious defect in relation to a residential apartment building;
 - (bb) significant harm or loss to the public or occupiers or potential occupiers of any building to which the Developer's Works relates; or
 - (cc) significant damage to property; and
 - (D) do not, by any act or omission, cause or contribute to any serious defect or the issue of any prohibition order, stop work order or building work rectification order;
 - (ii) must immediately provide the City with a copy of any notice issued to the Developer under the RAB (CEP) Act affecting the Developer's Works, including any prohibition order, stop work order, building work rectification order, notice of proposed building work rectification order and compliance cost notice;
 - (iii) must issue an expected completion notice to the Secretary in accordance with the RAB (CEP) Act at least 6 months, but not more than 12 months, before an application is made for an Occupation Certificate for any part of a residential apartment building for which the Developer's Works is being carried out and in any event so as to ensure that:

- (A) the Developer's Works are not delayed; and
 - (B) an Occupation Certificate is able to be applied for at the earliest possible time;
- (iv) must issue any required expected completion amendment notice to the Secretary in accordance with the RAB (CEP) Act;
 - (v) must provide all reasonable assistance to the City in exercising any right to make representations concerning any building work rectification order or right of appeal as contemplated by the RAB (CEP) Act, including by providing the City with any information that may be necessary or required by the City for the purposes of any such representation or appeal;
 - (vi) acknowledges and agrees that:
 - (A) the RAB (CEP) Act contemplates particular orders and requirements, including:
 - (aa) requirements of an authorised officer;
 - (bb) stop work orders;
 - (cc) building work rectification orders; and
 - (dd) orders of the Court referred to in section 49(3) of the RAB (CEP) Act;
 - (B) such orders and requirements may be given or otherwise communicated directly to the Developer or otherwise; and
 - (C) the Developer must ensure that the Developer, its Personnel and their respective employees and agents comply with any such orders and requirements, whether they are given or otherwise communicated directly to the Developer or to any other person; and
 - (vii) must comply with any compliance cost notice and reimburse the City for any costs incurred by the City in respect of any compliance cost notice, to the extent any such compliance cost notice relates to the Developer's Works.
- (b) The Developer must satisfy all obligations imposed on a developer under the RAB (CEP) Act.
 - (c) The Developer indemnifies the City against any claims against, damages, expenses, losses or liability suffered or incurred by, the City arising out of, or in any way in connection with, any breach by the Developer of clause 5.5(a) or 5.5(b) of Schedule 3.
 - (d) The Developer will not be entitled to make, and the City will not be liable upon, any claim, damage, expense, loss or liability arising out of, or in any way in connection with, the Developer's obligations under this clause 5.5.

- (e) Except as otherwise provided in clause 1, all terms used in this clause 5.5 have the meanings given to them in the RAB (CEP) Act.

5.6 **DBP Act and DBP Regulation**

This clause 5.6 (other than this sentence) applies only to the extent that the DBP Act and the DBP Regulation applies to the Developer's Works.

- (a) Without limiting any other obligation of the Developer, the Developer must ensure that the Developer and its Personnel and their respective employees and agents:
 - (i) comply with the DBP Act and the DBP Regulation, including by preparing, providing and lodging all necessary or relevant documentation as and when required by, and in the form and method required by, the DBP Act and the DBP Regulation;
 - (ii) will be registered as required by the DBP Act and the DBP Regulation;
 - (iii) do not carry out the Developer's Works in a manner that results in, or could result in:
 - (A) significant harm or loss to the public or occupiers or potential occupiers of any building to which the Developer's Works relates; or
 - (B) significant damage to property; and
 - (iv) do not, by any act or omission, cause or contribute to the issue of any stop work order.
- (b) The Developer warrants to the City that the Developer will perform the Developer's Works so as to avoid, and to otherwise not cause or contribute to, any economic loss (as contemplated by Part 4 of the DBP Act) on the part of any owner arising out of or in connection with any defect or otherwise arising out of or in connection with the Developer's Works.
- (c) In addition to and without limiting any other duty or obligation assumed by the Developer, the Developer acknowledges and agrees that it owes a duty to the City to exercise reasonable care to avoid economic loss (as contemplated by Part 4 of the DBP Act and whether suffered or incurred by the City or any owner) arising out of or in connection with any defect or otherwise arising out of or in connection with the Developer's Works.
- (d) The Developer indemnifies the City against any claims against, damages, expenses, losses or liabilities suffered or incurred by, the City arising out of, or in any way in connection with, any breach by the Developer of this clause 5.6.
- (e) The Developer must include in any Completion Notice provided under clause 6.2 a statement from each person directly responsible for the lodgement of documents as required by the DBP Act that all necessary and relevant documentation relating to the Developer's Works has been prepared, provided and lodged as and when required by, and in the form

and method required by, the DBP Act and DBP Regulation. The Developer must provide a copy of all such documentation referred to in this clause 5.6(e) to the City with any Completion Notice.

- (f) The Developer will not be entitled to make, and the City will not be liable upon, any claim, damage, expense, loss or liability arising out of, or in any way in connection with, the Developer's obligations under this clause 5.6.
- (g) Except as otherwise provided in clause 1, all terms used in this clause 5.6 have the meanings given to them in the DBP Act and the DBP Regulation.

6. **STANDARDS**

The following list of Standards are included for information purposes only, and as a guide to the relevant standards for the general nature of the work identified as Developer's Works in this document. The City makes no representation or warranty as to the currency of the standards identified, or their application on the final design of the Developer's Works. The Developer must make its own enquiries regarding whether any standard has been replaced or supplemented. In the event that an Australian Standard prescribed a different level of material, finish, work or workmanship than those contained in a City standard, then the higher of the two standards will apply. If there is a conflict between City standards then the Developer must request the City nominate the correct and applicable City standard. The City's decision as to the applicable standard is final.

Relevant Australian Standards – Verge Works, Through site links

- AS 1725 Geotechnical Site investigations;
- AS 4455 Masonry Units and segmental pavers;
- AS 4678 Earth Retaining Structures;
- AS 3600 Concrete Structures;
- AS 2876 Concrete kerbs and channels;
- AS 1158 Road Lighting;
- AS 1743 Road signs;
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting;
- AS 3500 Plumbing and Drainage;
- AS 3700 Masonry Structures;
- AS 2890 Parking Facilities;
- AS 1428 Design for Access and Mobility; and
- AS 4454 Composts, soil conditioners and mulches.

Relevant Australian Standards – Roads (including pedestrian areas)

- AS 1725 Geotechnical Site investigations;
- AS 4455 Masonry Units and segmental pavers;
- AS 4678 Earth Retaining Structures;
- AS 3600 Concrete Structures;

- AS 2876 Concrete kerbs and channels;
- AS 1158 Road Lighting;
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting;
- AS 1428 Design for Access and Mobility;
- AS 3500 Plumbing and Drainage;
- AS 3700 Masonry Structures;
- AS 2890 Parking Facilities;
- AS 1742 Manual of uniform traffic control devices; and
- AS 1743 Road Signs.

City Standards (All Works)

- City of Sydney Contaminated Lands DCP 2004;
- Sydney Street Code 2013;
- Sydney Lights Code 2013;
- City of Sydney Access Policy;
- Sydney Street Technical Specification and Drawings;
- City of Sydney Street Tree Master Plan 2011; and
- City of Sydney Public Domain Manual.

EXECUTION

EXECUTED as a deed.

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:

Alisa Nicholson

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

Graham Jahn

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

Graham Jahn
Name of authorised officer

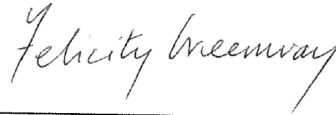
Director City Planning, Development and Transport

Position of authorised officer

Authorised delegate pursuant to section
377 of the *Local Government Act 1993*

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



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

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



Signature of witness

Felicity Greenway

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

Kate Speare

Name of witness

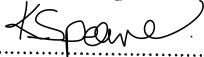
A/Deputy Secretary - Planning Policy

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)

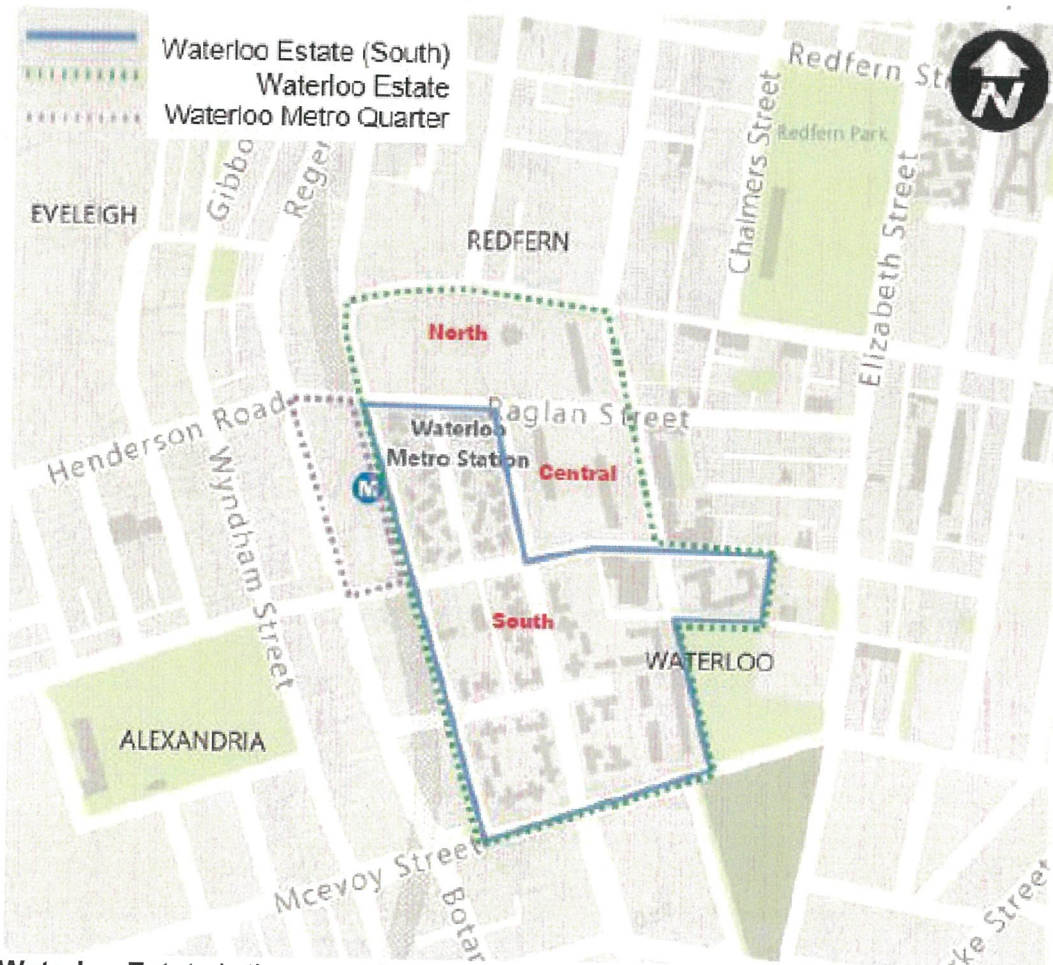
CHIEF EXECUTIVE,

Office held
NSW Land and Housing
Corporation.

ANNEXURE A

Public Benefits – additional plans and specifications

A. PLAN OF WATERLOO ESTATE (SOUTH)



Waterloo Estate is the approximate area outlined in dotted green.

Waterloo Estate (South) is the approximate area outlined in blue, bounded by Raglan Street in the north, Cope Street in the west, McEvoy Street in the south, and Waterloo Park, Kellick Street, Gibson Street, Wellington Street and George Street to the east.

B. TRANSFER LAND

The Developer must ensure that the Transfer Land:

- (a) is remediated to a level required for the Transfer Land to be suitable for the purposes of the Public Benefits and in accordance with any Remediation Action Plan approved in connection with the Development Consent; and

The Council of the City of Sydney

Minister administering the *Environmental Planning and Assessment Act 1919*

NSW Land and Housing Corporation

- (b) includes delivery of whatever is necessary for proper street functions in relation to Roads and Road Reserves and to accommodate the Phasing of the Development.

A long-term Environmental Management Plan will not be required on transfer of the Transfer Land.



Indicative Plan of Transfer Land

C. CLOSURE OF PUBLIC ROADS

- (a) The Developer must notify the City in writing at least 12 months prior to undertaking works on or near a public road in the Development.
- (b) The City will procure the closing of any public road in accordance with the *Roads Act 1993* (NSW) where that is necessary to provide the Public Open Space.

D. DESIGN PROCESSES FOR PUBLIC BENEFITS

(Clause 4.1(a) in Schedule 3)

1. Streetscape Design for Road Reserves

The parties acknowledge and agree that:

- (a) upon the issue of the Secretary's environmental assessment requirements for the Concept Development Application for the Development (or any part of) and until the Concept Development Application is lodged, a Public Infrastructure Working Group as outlined in Part I of this Annexure A will be established in accordance with terms of reference to be agreed by the Minister, the City and the Developer for the process for the design and construction of the Road Reserves, being a process that is generally consistent with the Waterloo South Road Design Process Map in Part I of this Annexure A as it may be amended from time to time by all the parties acting reasonably; and
- (b) the Public Infrastructure Working Group will consider the design of the Road Reserves and will be chaired by a representative of the Department of Planning and Environment and include representatives of the Developer and the City.

2. Public Open Space

Following the notice issued by the Developer under clause 4.2(a) of Schedule 3, the City will prepare, at its cost, public domain and civil concept plans for each park no more than two years ahead of its development.

This timing is critical to ensure community consultation is undertaken at a time that the community is forming and the needs are relevant to the time of delivery.

The City will consult with the Developer and the concept design will be undertaken by the City generally in accordance with any consent granted to a concept development application for the Public Open Space. The Developer and the City will discuss whether any modifications to the consent may need to be sought to achieve an aspect of the park design. If necessary, the City may require the Developer to apply for a modification to the consent to the Concept Development Application to achieve an aspect of the Public Open Space design being an aspect that does not affect the surrounding development.

The City will have regard to any recommendations made by the Public Infrastructure Working Group.

The parties agree that the park design budget is to be \$1000/m² (indexed from 2015) exclusive of land value and remediation costs and the concept design prepared by the City and final design prepared by the Developer so as to not exceed the park design budget.

A cost estimate will be prepared in accordance with Part E in this Annexure A. The cost estimate will determine the Attributed Value of the embellishment of the Public Open Space for the Purposes of Part E, the Guarantee Amount in relation to that work and compliance with park design budget under this Part D.

The design will include:

- Overall grading plan
- General layout
- Hard paving
- Retaining walls and other
- Tree planting
- Turf and soft planting
- Irrigation reticulation
- Lighting plan and electrical reticulation
- Stormwater drainage connecting to road network
- Utility services where applicable
- Signage
- Furniture – benches, bins, bubblers, picnic tables, barbecues
- Play equipment where applicable
- Exercise/recreation equipment where applicable
- Public Art where applicable
- Water features where applicable
- Toilet facilities where applicable
- Fencing/balustrading where applicable

3. Community Facilities

The plan in Part B of this Annexure A shows indicative sites for community uses. The Developer will collaborate with the City on the most appropriate areas for the Community Facilities within the indicative sites or any other site if agreed to by the City.

Following the notice issued by the Developer under clause 4.2(a) of Schedule 3, the City will prepare, at its cost, a performance brief including the items listed below for completion of each Community Facility (**Performance Brief**) no more than two years ahead of its development. The City will consult with the Developer when preparing the Performance Brief in respect of the targeted location(s) of the Community Facilities.

This timing is critical to ensure community consultation is undertaken at a time that the community is forming and the needs are relevant to the time of delivery.

The parties agree that the Community Facilities design budget to be \$7500/m² (indexed from 2015) of the GFA of the community facilities exclusive of land value and remediation costs and the Performance Brief prepared by the City and final design prepared by the Developer is to be prepared so as to not exceed the Community Facilities design budget. The Developer will prepare the Design, to be verified by the same Quantity Surveyor appointed under Part E in this Annexure A.

The Performance Brief will include:

- Functional requirements for the use of the facility

- General guidelines on capacity
- Toilet Facility requirements
- Office requirements
- Kitchenette Requirements
- AV Requirements
- Internet Access and other System Requirements
- Security Requirements
- AC Requirements
- ESD Requirements

The City must prepare the Performance Brief for the Community Facilities in consultation with the Developer. The Developer and the City will agree on the location of the Community Facilities within the allocated area for Community Facilities or an alternative mutually agreed location and the Developer will submit a concept design for approval.

E. QUANTITY SURVEYOR – DEVELOPER’S WORKS

- (a) The parties acknowledge and agree that as at the date of this document:
 - (i) the final design of the Developer’s Works has not been determined; and
 - (ii) the Attributed Value for the Developer’s Works has not been determined.
- (b) The City and the Developer will each engage a Quantity Surveyor to assess the value of the Developer’s Works following completion of the process set out in clause 4.2(a)-(c) of Schedule 3 and prior to the issue of a Construction Certificate or a Crown Building Work Certificate (as the case may require) for any of the Developer’s Works, having regard to the final design and use of the Developer’s Works approved by the City, and provide the Quantity Surveyor’s Assessment to the parties.
- (c) If the values of the Developer’s Works in the Quantity Surveyor’s Assessments provided by the Quantity Surveyors engaged by the City and the Developer in accordance with Part E(b) vary by less than 10%, the average of those values is to be adopted as the Attributed Value of the Developer’s Works for the purpose of this document.
- (d) If the values of the Developer’s Works in the Quantity Surveyor’s Assessments provided by the Quantity Surveyors engaged by the City and the Developer in accordance with Part E(b) vary by 10% or more, then the Quantity Surveyors are to compare their Quantity Surveyors’ Assessments, attempt to find common ground (whether this be agreement on value or agreement as to valuation drivers, methodologies or inputs) and review their Quantity Surveyors’ Assessments. If the values of the Developer’s Works in the Quantity Surveyors’ Assessments continue to vary by 10% or more, then the Attributed Value for the Developer’s Works will be determined by a Quantity Surveyor appointed by the Chair of the Australian Property Institute NSW State Committee. That Quantity Surveyor must prepare a Quantity Surveyors’ Assessment having regard to the matters in Part E(b).

- (e) The Attributed Value for the Developer's Works is to be adjusted annually for CPI indexation until such time as the Credit Amount is determined in accordance with Part F of Annexure A.

Note. The Attributed Value of the Embellishment of Road Reserves is nil for the purpose of determining any Credit Amount under Part F.

- (f) The cost of engaging the Quantity Surveyor appointed under Part E(d) will be borne equally between the City and the Developer.

F. CREDIT AMOUNT

- (a) The parties acknowledge and agree that if the Developer were to provide Public Benefits solely as a Monetary Contribution, the Monetary Contribution would be equal to the sum of the amounts for each part of the Development that is the subject of a Development Application (**Relevant Part of the Development**) calculated in accordance with this Part F.

Note. The application of sections 7.11 and 7.12 of the Act to the Development is excluded. However, if section 7.11 did apply to the Development, a contribution would be calculated in accordance with the *City of Sydney Development Contributions Plan 2015* or having regard to it. The purpose of this Part F is to determine what contribution amount would have been payable if the City's Contribution Plan were applied to the Development, and then to provide that if the value of the public benefits under the VPA comprising land and works (other than in relation to road reserves) exceeds the contribution amount under the City's Contribution Plan, the Developer can apply the difference (the **Credit Amount**) to offset future liabilities to pay contributions for development in North and Central Waterloo. If the contribution amount that would have been payable under the City's Contribution Plan would have been more than the value of those benefits, a monetary contribution representing the difference needs to be paid.

- (b) An amount for each Relevant Part of the Development (**Notional Monetary Contribution for a DA**) is to be determined by applying the *City of Sydney Development Contributions Plan 2015* to that part, as if the application of sections 7.11 and 7.12 of the Act to the Development had not been excluded. For the purposes of this Part F, the version of the *City of Sydney Development Contributions Plan 2015* that is to be applied is the version of the plan as in force at the date of this document, but as it must be applied, or would be required to be applied, in accordance with any direction of the Minister under section 7.17 of the Act that is in force at the date of the grant of consent for the Relevant Part of the Development referred to in Part F(c) (**City Contributions Plan February 2022 Version**). The parties acknowledge that at the date of this document the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* limits the maximum amount of a contribution for development for residential accommodation to a contribution based on no more than \$20,000 per dwelling.

Note. The Minister's direction under section 7.17 of the Act (*Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012*) (**2012 Direction**), as in force at the time this document was executed, limits contributions for residential development in the City to \$20,000 per dwelling. The rate for one bedroom dwellings as at 1 January 2023 is \$18,197 per dwelling and for two and three bedroom dwellings is \$20,000 per dwelling.

If the 2012 Direction has been revoked (and not replaced) by the time the Notional Monetary Contribution for a DA must be calculated under paragraph (c) below, the higher rates currently set out in the *City of Sydney Development Contributions Plan 2015* (on page 84 of the plan) would apply to the calculation. If the 2012 Direction has been amended or replaced by another direction under section 7.17 so as to limit the imposition of contributions for residential development to amounts that nevertheless exceed amounts calculated using the higher rates currently set out in the plan (on page 84), then those higher rates set out in the plan (on page 84) must be used for the purposes of this Part F. If the 2012 Direction has been amended or replaced by another direction under section 7.17 so as to limit the imposition of contributions to amounts calculated using rates less than the higher rates set out in the plan (on page 84), but more than \$20,000 per dwelling, then the contribution amounts for the purposes of this Part are subject to the new limits in the direction and the higher rates (on page 84) cannot be used.

The *City of Sydney Development Contributions Plan 2015* also sets out a transitional arrangement if the 2012 Direction is revoked or amended. In relation to the higher rates set on page 84, it states that they will only be applied to development applications, including section 96 applications, made after the date on which the revocation or amendment of the direction applies. This transitional arrangement will also apply to the calculation of the Notional Monetary Contribution for a DA under paragraph (c) below.

However, if the Minister's direction is proposed to be revoked or amended to remove those limits, the parties propose to discuss transitional arrangements.

- (c) As soon as practicable after the grant of development consent for each Relevant Part of the Development, a Notional Monetary Contribution for the DA must be calculated by applying the City Contributions Plan February 2022 Version. Accordingly, if the *Environmental Planning and Assessment (Local Infrastructure Contributions) Direction 2012* has been revoked or amended as at the date of consent to increase the maximum amount of a contribution under section 7.11 of the Act that can be imposed, the rates specified in the City Contributions Plan February 2022 Version as the applicable rates that would apply in the absence of an applicable direction under section 7.17 are to be used in the calculation, subject to any further direction in force under that section at the time that consent is granted.

Note. Refer to paragraph (b) above for the definition of City Contributions Plan February 2022 Version. This makes it clear that the contributions plan of the City is the version of that Plan in force at the date of this document, but when the Notional Monetary Contribution for a DA is calculated it is applied in accordance with any directions of the Minister under section 7.17 as in force at the date of the consent to the relevant DA.

- (d) To assist in the calculation of each Notional Monetary Contribution for each DA, the Developer is to provide to the City (and the Minister) information in a form approved by the City that includes the following:
- (i) the number of one bedroom dwellings, the number of two bedroom dwellings and the number of three bedroom dwellings;
 - (ii) in respect of each category (that is, one bedroom dwellings, two bedroom dwellings and three bedroom dwellings) - the number that are to be Affordable Housing Dwellings or Social Housing Dwellings;

- (iii) information necessary to apply the per worker and per visitor rates set out in the City Contributions Plan February 2022 Version, including the gross floor area (in square metres) for the purposes of development specified in that Plan for which a contribution may be required, such as commercial premises.

The information is to be provided within 5 Business Days of the grant of the Development Consent for the DA.

- (e) If Development Consent for a DA is modified so that the information provided in accordance with Part F(d) is no longer correct, the Developer is to update that information and provide it within 5 Business Days to the City and the Minister. A revised Notional Monetary Contribution for the DA is to be determined in accordance with the City Contributions Plan February 2022 Version.
- (f) The City is to provide a schedule (**Notional Monetary Contribution Schedule**) to the Developer and to the Minister setting out the Notional Monetary Contribution for a DA within 10 Business Days of receiving the information (and any supplementary information reasonably requested by the City) from the Developer under Part F(d) for that DA or updated information from the Developer under Part F(e). The schedule is to be updated and re-issued to the Developer (and a copy provided to the Minister) whenever a new Notional Monetary Contribution for a DA is calculated or re-calculated.
- (g) Each Notional Monetary Contribution for a DA is to be adjusted using CPI on an annual basis until the Total Notional Monetary Contribution is determined under Part F(h), but only to the extent that the adjustment of a contribution amount specified in a condition of development consent at the time of its payment would be authorised by the City Contributions Plan February 2022 Version and any direction of the Minister under section 7.17 of the Act. The schedule is to be revised to show the amount as adjusted, and a copy provided to the Developer and the Minister.
- (h) When the Developer has provided written notice to the City that the Development has been completed, and the Public Benefits have been provided in accordance with this document, the City is, as soon as practicable, to provide the Developer and the Minister with the Notional Monetary Contribution Schedule that shows the sum of the Notional Monetary Contributions for DAs (**Total Notional Monetary Contribution**).
- (i) The City and the Developer acknowledge and agree that the Attributed Value of the Developer's Works as determined in accordance with Part E(c) or (d) of this Annexure A and the Attributed Value of the Transfer Land as set out in Schedule 3 (together, the **Attributed Value of Public Benefits**) may be more or less than the Total Notional Monetary Contribution.
- (j) If the Attributed Value of Public Benefits is more than the Total Notional Monetary Contribution at the time the latter must be determined in accordance with Part F(h), the Developer may apply the amount that represents the difference between the Attributed Value of Public Benefits and the Notional Monetary Contribution (**Credit Amount**) to discharge in part or whole the Developer's liability to make a development contribution under

section 7.11 or 7.12 of the Act for future development on Waterloo Estate (North) Land or Waterloo Estate (Central) Land.

- (k) If the Attributed Value of Public Benefits is less than the Total Notional Monetary Contribution at the time that the latter must be determined in accordance with Part F(h), the Developer must pay the difference between the two amounts to the City (**Additional Monetary Contribution**) within 20 Business Days of receiving the Notional Monetary Contribution Schedule under Part F(h), by either bank transfer or bank cheque to the City as advised by the City at the time of providing that schedule.
- (l) The Credit Amount is to be adjusted annually using CPI until such time as the amount is drawn upon by the Developer.
- (m) Despite Part F(j), the Developer is not entitled to draw upon the Credit Amount to partially discharge a liability to make a contribution under section 7.11 of the Act for development on Waterloo Estate (North) Land or Waterloo Estate (Central) Land to the extent that the contribution required by the relevant condition of development consent is less than the contribution calculated in accordance with the applicable contributions plan of the City because the consent authority has taken into consideration the Public Benefits provided under this document as referred to in section 7.11(6) of the Act.
- (n) The Developer must not apply, or purport to apply, or agree to or allow any other person to apply or purport to apply, part of the Credit Amount to discharge an obligation to make a development contribution except in accordance with this Part of the document.
- (o) The Notional Monetary Contribution Schedule is to be revised to specify any Credit Amount as referred to in Part F(j) and whenever the Credit Amount is adjusted under Part F(l) or the Developer draws upon the Credit Amount under Part F(j), so as to indicate the amount that remains available to the Developer at any time. The revised schedule is to be provided promptly to both the Developer and the Minister.
- (p) To avoid doubt, in calculating the Notional Monetary Contribution for a DA, the number of Affordable Housing Dwellings and Social Housing Dwellings is to be excluded from the number of dwellings on which the calculation may be based.
- (q) The Developer agrees that the City may recover any Additional Monetary Contribution due to the City under this Part F as a debt in a court of competent jurisdiction.
- (r) In this Part F:

Affordable Housing Dwellings means dwellings that are affordable housing within the meaning of the Act.

Attributed Value of the Developer's Works means the Attributed Value of the Developer's Works other than Essential Infrastructure - Embellishment of the Road Reserves, referred to in Item 3(c) of the table to clause 1.1 in Schedule 3.

Development Application or **DA** means a development application (and an application for a complying development certificate) within the meaning of the Act, but only includes a concept development application within the meaning of the Act to the extent that the application sets out detailed proposals for the first stage of development.

Social Housing Dwellings means dwellings that are social housing provided by a social housing provider within the meaning of *State Environmental Planning Policy (Housing) 2021*.

Note. Any Dispute in relation to the application of this Part F, and the calculation of the Total Notional Monetary Contribution and the content of the Notional Monetary Contribution Schedule is to be dealt with under clause 11.

G. MAINTENANCE OF DEVELOPER'S WORKS

In addition to its obligations under clause 5.2, for a period of 12 months from Completion, the Developer must maintain all plants, trees and planted areas in optimum growing condition and appearance, which shall include but is not limited to:

- (a) Water all plants and trees as required to ensure active growth keeping areas moist but not saturated;
- (b) Apply maintenance period fertiliser in accordance with the manufacturer's specifications;
- (c) Keep planting areas free of weeds and undesirable grasses. Remove the entire root system. Dispose of all weeds appropriately;
- (d) Inspect all plants and trees for disease or insect damage weekly. Treat affected material immediately;
- (e) Remove damaged or diseased growth from plants and trees;
- (f) Immediately replace any failed or damaged plants and trees. Replacement plants and trees shall be of equal size and species as the original plant;
- (g) Reset to proper grades or upright position any plants that are not in their proper growing position;
- (h) Stakes and ties must be adjusted or replaced as required;
- (i) Prune plants and trees in order to repair mechanical damage, improve plant shape and to form or clear footpaths;
- (j) Turfed areas must be mowed when sufficient establishment of turf has occurred including but not limited to adequate root contact/anchoring and root depth. All edges must be trimmed. Lawn clippings must be removed from site. Adjust the height of the mower to the lowest level where the lawn has a green appearance without being scalped; and
- (k) Top-dress lawn when required and replace any areas of subsidence or dead turf which are greater than 1m² in area. Apply lawn fertiliser to ensure healthy growth in the growing season. Remove by hand all weed growth or grass around base of plants in turf. Do not use nylon line type edge trimmers around base of trees.

H. STRATA MANAGEMENT STATEMENT

- (a) This clause applies where a community facility (**Facility**) under this document is to be provided within a strata development.
- (b) The Developer must ensure that, if necessary, the strata management statement registered with the deposited plan relating to the Facility, as amended from time to time, or any strata management statement which replaces that statement (**Strata Management Statement**) provides for the City or any lessee under a lease of the Facility (**Lease**) to have a right to access to any car spaces that form part of the Facility and any garbage and utility areas in the building where the Facility is located (**Building**) that are for the use of the owners and occupiers of but which do not form part of the Facility. The parties agree that any access rights created under the Strata Management Statement will be exercisable by the owners and occupiers of the Facility on terms no more favourable to the owners and occupiers of the Facility than the terms of the rights of access to shared facilities of a similar nature granted to owners and occupiers of other lots in the Building.
- (c) If, prior to commencement of the Lease, the Developer proposes to make any changes to the Strata Management Statement which:
 - (i) impact on the rights and obligations of the Facility or on the costs attributable to the Facility or shared facilities used by the Facility under the Strata Management Statement; and
 - (ii) increase the cost payable by the owner of the Facility under the Strata Management Statement,

the Developer must first submit the proposed changes in writing to the City for approval. The City must act reasonably in approving or refusing the proposed changes. If, within 10 Business Days of submission of a proposed change to the City, the City has not responded in writing to the Developer saying whether the City approves or refuses the proposed change (and, in the case of a refusal, giving in reasonable detail its reasons for the refusal), the City shall be deemed to have approved the proposed change.

I. WATERLOO SOUTH ROAD DESIGN PROCESS MAP AND GUIDANCE FOR PUBLIC INFRASTRUCTURE WORKING GROUP

- (a) The following is to guide the development of future terms of reference for the proposed Public Infrastructure Working Group:
 - (i) Purpose – to provide increased assurance that the roads will be designed in accordance with the Waterloo Estate (South) Design Guide, and the City of Sydney Streets Code, Lighting code and Technical Specification;
 - (ii) The group will make recommendations to inform road design so that assets will meet the required standards;
 - (iii) LAHC will be responsible for designing the roads, utilising input from the City via the group;

- (iv) The group will meet regularly post-SEARs until lodgement of the Concept Development Application;
- (v) Outstanding disagreements – if a disagreement arises, the Department of Planning and Environment as Chair will work with both parties to resolve the issue. In the event the dispute cannot be resolved, the Chair will provide comments to the relevant Department of Planning and Environment State Significant Development Assessment team for consideration during the planning assessment process.

(b) Waterloo South Public Infrastructure Process Map:

Waterloo South Public Infrastructure Process Map				
	Standard SSD Process	Additional CoS input/approval	Note: This only shows the workflow related to a Concept DA. The process will be repeated for each SSDA stage (approx 5 times) plus any modifications.	
	CoS	LAHC	DPE	IPC
Role	Advise on road design through the PIWG, providing recommendations and input throughout the SSD assessment and determination process, and having a certification/approval role during construction	Prepare SSD concept plan documentation (including road design), ensuring documentation meets SEARS, responding to CoS input throughout the assessment and determination process, construction roads in line with CoS requirements	Chair PIWG and consider CoS advice throughout pre-lodgement, assessment and determination process	If SSD is referred to IPC, IPC will meet with and consider any recommendations from CoS and determine the project
SEARS	Provide advice on SEARS		Seek agency (including CoS) advice on SEARS	
Prepare SSD Concept Plan	Public Infrastructure Working Group: to ensure roads are designed in accordance with Waterloo Estate (South) Design Guide, the City of Sydney Streets Code, Lighting Code and Technical Specification. Provide recommendations and advice	All relevant design guidelines and standards are to be referenced in the preparation of the road designs, including but not limited to, Australian Standards, Austroads Guides, TNSW Technical Directions, DDA compliance, Utility Services also to be addressed.	Chair Public Infrastructure Working Group	
Pre-Lodgement Engagement		Engagement with residents, community and key stakeholders		
Lodgement			Assess SEARS have been met (including Public Domain requirements)	
Exhibition	Opportunity to provide submission on proposal		Notify and exhibit proposal	
Submission		Prepare submission report addressing issues raised. Further engagement with agencies required for outstanding issues	Consideration of all submissions	
Assessment & Determination (Minister)	Opportunity to provide comment on draft conditions		Consultation with Stakeholders following draft conditions	
Assessment & Determination (IPC)	Meet with IPC and attend public hearing/ meetings as required	Meet with IPC and attend public hearing/ meetings as required	Prepare & send draft assessment report to IPC	Consultation with CoS may include: 1:1 briefings, public hearing or meetings, requests for additional information or briefings
Construction	CoS to have approval role for plans and specifications prior to commencement of works. CoS approval/certification of road designs prior to construction commencing. Approval prior to asset dedication	LAHC to ensure roads built to CoS requirements and approved plans and specifications		

The Council of the City of Sydney

Minister administering the *Environmental Planning and Assessment Act 1919*

Felicity Greenway

NSW Land and Housing Corporation

Deed of Novation

(Clause 13.2)

DEED OF NOVATION

THIS DEED OF NOVATION 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 ("**Council**"), and
2. **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**")
3. **[Insert Name, ACN and address]** (*[jointly]*), the "**Outgoing Party**", and
4. **[Insert Name, ACN and address]** ("**Incoming Party**").

BACKGROUND

- A. The Council, the Minister and the Outgoing Party are Parties to the VPA.
- B. The VPA relates to the whole of the Land.
- C. The Outgoing Party wishes to transfer the **[Land/part of the Land]** to the Incoming Party.
- D. The Incoming Party agrees to perform the obligations and seeks to obtain the benefits of the Outgoing Party under the VPA.
- E. The Outgoing Party and the Incoming Party have agreed to enter into this Deed of Novation, in accordance with clause 13.2 of the VPA, at the request of the Council.

1. Definitions and Interpretation

Land means **[#]**.

VPA is the Planning Agreement entered into between the Council and the Outgoing Party on **[date]**, registered number **[#]**.

1.1 Definitions

Words and expressions defined in the VPA have the same meaning in this Deed.

1.2 Headings

Headings do not affect the interpretation of this document.

2. Performance of Obligations

2.1 Incoming Party

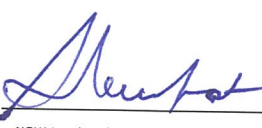
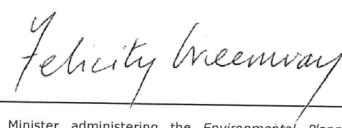
On and from the date of this Deed, the Incoming Party:

- (a) is substituted for the Outgoing Party as a party to the VPA and acknowledges itself to be bound by the provisions of the VPA, as if the Incoming Party had originally been named as the Outgoing Party in that VPA;

The Council of the City of Sydney



Minister administering the *Environmental Planning and Assessment Act 1919*



NSW Land and Housing Corporation

- (b) without limiting clause 2.1(a), must punctually carry out and perform all other obligations of the Outgoing Party under the VPA which are not performed at the date of this Deed; and
- (c) will be:
 - (i) entitled to the benefit of the VPA; and
 - (ii) entitled to enforce the VPA against Council,as if the Incoming Party had originally been named as the Outgoing Party in that VPA.

2.2 Notices

The Council and the Minister must address all notices and communications to be given or made by it to the Incoming Party under the VPA to the following address:

[Insert Incoming Party address]

3. Performance affected by novation

3.1 Performance by Outgoing Party

The Outgoing Party:

- (a) (subject to clause 3.3 of this Deed) releases and discharges Council and the Minister from its respective obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA that arise on or after the date of this Deed; and
- (b) warrants to the Council, the Minister and the Incoming Party that it has properly performed its obligations under the VPA up to and including the date of this Deed, complying with all contractual requirements.

3.2 [Developer's / Landowner's] obligations

The Incoming Party must perform all of the [Developer's / Landowner's] obligations under the VPA as if named as the [Developer / Landowner], whether or not the relevant obligations relate to works that were to be performed prior to the date of this Deed, including the delivery of all Public Benefits to Council.

3.3 Release by Council

The Council and the Minister release and discharge the Outgoing Party from all of its obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA that arise on or after the date of this Deed.

4. Governing Law

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

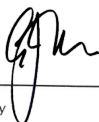
5. Further acts

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.

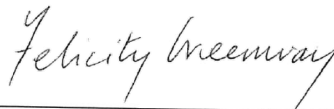
6. Counterparts

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

The Council of the City of Sydney



Minister administering the *Environmental Planning and Assessment Act 1919*



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