

ATTACHMENT D

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**DRAFT PLANNING AGREEMENT -
87 BAY STREET GLEBE**

The Council of the City of Sydney
ABN 22 636 550 790

M.T. Management Pty Ltd
ACN 082 084 062

Planning Agreement

Environmental Planning and Assessment At 1979

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THIS deed is dated

PARTIES:

THE COUNCIL OF THE CITY OF SYDNEY (ABN 22 636 550 790) of 456 Kent Street, Sydney, New South Wales, 2000 (**Council**)

M.T. MANAGEMENT PTY LTD (ACN 082 084 062) of Level 1, 179 Victoria Road, Drummoynes, New South Wales, (**Developer**)

INTRODUCTION:

- A** The Council has prepared the Planning Proposal.
- B** The Developer is the owner of the Land.
- C** The Developer has offered to enter into this deed to provide the Contributions in respect of the Development of the Land.
- D** This deed constitutes an agreement between the Developer and the Council, that the Developer will provide the Contributions in respect of the Development of the Land, on the terms and conditions contained in this deed.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

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

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

Affordable Housing has the same meaning as in the Act.

Affordable Housing Building means a building to be used for Affordable Housing purposes that comprises:

- (a) where a floor space ratio for the Development over the whole of the Land is approved above 1.5:1, no less than 7.5% of the Gross Floor Area of the Development above 1.5:1; or
- (b) no less than 7.5% of all residential Gross Floor Area approved in relation to the Development over the whole of the Land,

whichever is the greater.

Affordable Housing Contribution means the:

- (a) creation of the Affordable Housing Lot;
- (b) carrying out and completion of the Affordable Housing Building; and
- (c) creation and registration of the Public Positive Covenant,

in accordance with Schedule 4.

Affordable Housing Lot means a separate lot to be created by a subdivision of the Land in accordance with Schedule 4 and to be used for Affordable Housing purposes.

Affordable Housing Provider means a class 1 community housing provider registered as a growth provider or a class 2 community housing provider under Part 9A of the *Housing Act 2001* (NSW).

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by law or an Authority.

Attributed Value means the higher of:

- (a) the amount of \$642,452.00; or
- (b) \$642,452.00 plus an amount for the value as a result of any increase in the scope of the Developer's Works under clause 8.2,

which amount will not be indexed under this deed.

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

Bond means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) be signed and issued by 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;
- (b) have at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch); or
 - (ii) Baa 1 (Moody's); or
 - (iii) bbb (Bests),

- (c) be issued on behalf of the Developer;
- (d) have no expiry or end date;
- (e) have the beneficiary as the Council;
- (f) be irrevocable;
- (g) state either individually, or in total with other lodged compliant forms of Guarantee, the relevant minimum amount required to be lodged as security; and
- (h) state the purpose of the deposit required in accordance with this deed.

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

Completion means the stage in the construction of the Developer's Works when, in the reasonable discretion of the Council's Representative and notified under clause 9.6, the Developer's Works are complete except for minor omissions and minor defects which are non-essential and:

- (a) which do not prevent the Developer's Works from being reasonably capable of being used for their intended purposes;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Developer's Works.

Construction Certificate has the same meaning as in the Act.

Contributions mean the aggregate of the:

- (a) Affordable Housing Contribution;
- (b) Developer's Works Contribution;
- (c) ESD Contribution;
- (d) Road Contribution; and
- (e) Through-Site Link Contribution,

to be provided by the Developer in accordance with this deed.

Council's Representative means the person specified in Schedule 2 who is duly authorised to give approval under this deed or such other person as notified by the Council.

Defect means any error, omission, shrinkage, blemish in appearance or other fault in the Developer's Works caused by the Developer, its employees, agents or contractors which prevents the Developer's Works from being reasonably capable of being used for their intended purpose but excludes any damage caused to the Developer's Works by a third party.

Defects Liability Period means the period of 12 months from the date on which the Developer's Works reach Completion.

Developer's Works Contribution means the carrying out and completion of the Developer's Works by the Developer.

Developer's Works means the works described in Schedule 5.

Development means the development of the Land for a mixed use development comprising:

- (a) Affordable Housing dwellings;
- (b) residential uses;
- (c) commercial uses; and
- (d) public domain works and improvements.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

ESD Contribution means the delivery of the ESD Required Targets in accordance with Schedule 4.

ESD Required Targets means:

- (a) a minimum 4 star NABERS Energy office rating for those parts of the Development that will be used for commercial purposes; and
- (b) a BASIX energy target of 40% and a BASIX water target of 50% for any Development Consent issued with respect to the Land, for those parts of the Development that will be used for residential (including Affordable Housing) purposes.

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

Final Affordable Housing Covenant means a covenant created under section 88E of the *Conveyancing Act 1919* (NSW) or some other registrable document that includes terms similar to those set out in Part C of Schedule 7, which includes a

requirement that an Affordable Housing Provider manage the Affordable Housing Building.

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

Gross Floor Area has the same meaning as in the LEP.

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

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

Guarantee means a Bond or one or more unconditional bank guarantees, unlimited in time, issued by a bank licensed to carry on business in Australia that is:

- (a) in favour of the Council;
- (b) for the Attributed Value; and

on such other terms and conditions the Council may approve from time to time.

Initial Affordable Housing Covenant means a covenant created under section 88E of the *Conveyancing Act 1919* (NSW) or some other registrable document that includes terms similar to those set out in Part B of Schedule 7.

Land means the land described in Schedule 3 of this deed.

LEP means the *Sydney Local Environmental Plan 2012*.

Mixed Use Building means any buildings other than the Affordable Housing Building to be constructed on the Land to be used for mixed use purposes.

Notification means notification of the Planning Proposal within the meaning of section 34(5) of the Act.

Occupation Certificate has the same meaning as in the Act and includes an interim Occupation Certificate.

Planning Proposal means a proposal to amend the LEP to among other things, allow a maximum floor space ratio of 3.7:1 (plus a bonus of up to 10% for design excellence calculated on the floor space ratio of 1.5:1 as shown on the Floor Space Ratio Map in the LEP) in respect of the Land.

Note: The effect of these amendments is that if the relevant LEP provisions are satisfied, including the achievement of design excellence and the additional floor space ratio requirements are achieved, the maximum floor space ratio achievable will be 3.85:1.

Plan of Subdivision means:

- (a) a registered plan of subdivision under Division 3 of Part 23 of the *Conveyancing Act 1919* (NSW);
- (b) a strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* (NSW);
- (c) any form of dealing required by an Authority or the Developer to be registered with a plan of subdivision or strata plan regarding the creation of easements, covenants or other obligations.

Public Benefits means the public benefits which are to be provided as a result of the Developer's Works, including the provision of any works to the Road Lot and the Through-Site Link Lot.

Public Positive Covenant means the Initial Affordable Housing Covenant and the Final Affordable Housing Covenant.

Quantity Surveyor means a duly qualified quantity surveyor of at least five (5) year's experience in the assessment of building material and construction costs.

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

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

Registrar-General means the Registrar General who maintains the Register.

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

Related Entity has the same meaning as in the *Corporations Act 2001* (Cth).

Relevant Legal Challenge means proceedings in a Court in which a declaration is sought that any Development Consent and/or this agreement is invalid and includes but is not limited to any proceedings in which such a declaration is sought which are heard on remitter from another Court following an appeal.

Road Contribution means the creation and dedication of the Road Lot in accordance with Schedule 4.

Road Lot means a strip of land that is set back 1.5m from the northern boundary of the Land for the entire length of Wentworth Park Road.

Stage means Stage 1 or Stage 2 of the Development as referred to in the staging plan in Schedule 8.

Standards means the policies, procedures and standards for carrying out of the Developer's Works identified in Schedule 6.

Suspension Expiry Date means the date on which the Suspension Period ends.

Suspension Period means the period of time from and including the date on which a document initiating a Relevant Legal Challenge has been served on either or both the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Relevant Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Relevant Legal Challenge; or
 - (iii) for any other reason, the Relevant Legal Challenge no longer includes an application for a declaration that any Development Consent or/and this agreement is invalid;
 - (iv) whichever is the earlier;
- (b) subject to paragraph (c), if an appeal notice is filed and served in connection with final orders in the Relevant Legal Challenge or an appeal from the Relevant Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the appeal is discontinued;
 - (ii) for any other reason, the appeal no longer includes an appeal in respect of a Court decision regarding the validity of any Development Consent and /or this agreement whichever is earlier, unless the orders in the Appeal require the Relevant Legal Challenge to be remitted to another Court in relation to the validity of any Development Consent and /or this agreement, in which case paragraph (a) re-applies; or
- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an appeal notice described in paragraph (b) has expired, if no valid appeal notice has been filed and served by that first-mentioned date.

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

Through-Site Link Contribution means the creation and registration of the Through-Site Link Easement in accordance with Schedule 4.

Through-Site Link Easement means an easement to be created and registered over part of the Land that includes terms similar to those set out in Part A of Schedule 7.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) the obligations of a party are joint and several;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;

- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing;
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting; and
- (t) a word defined in the Act has the same meaning in this deed.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

- (a) The provisions of this deed, other than clause 14.3(b), will commence upon date that is the later of:
 - (i) the execution of this deed by all parties;
 - (ii) the Notification of the Planning Proposal.
- (b) Clause 14.3(b) commences when this deed is executed by all parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

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

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

3.1 Application of Sections 94, 94A and 94EF of Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

3.2 Scope

This deed does not include mechanisms for the payment of, and does not in any way reduce, offset or negate the Developer's obligations to pay monies under:

- (a) section 94 or 94A of the Act;

- (b) any other statute or instrument that may apply to the Land or to any part of the Development.

4 CONTRIBUTIONS

4.1 Developer to provide Contributions

The Developer undertakes to provide to the Council, the Contributions in accordance with the provisions of this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to the provisions of section 93F of the Act to this deed, the Council:

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

5 ENFORCEMENT

5.1 Developer to provide security

- (a) The Developer must provide a Guarantee to the Council for the same amount as the Attributed Value in relation to the Developer's Works, prior to the issue of any Construction Certificate that relates to the Development.
- (b) The parties agree that:
 - (i) the provision of the Guarantee;
 - (ii) clauses 2.4, 5.2 and 6.2 of Schedule 4; and
 - (iii) section 109H(2) of the Act,constitute the security for the purposes of this deed.

5.2 Rights and remedies of the Council

- (a) The Developer expressly acknowledges and agrees that the Council may make an appropriation from the Guarantee in such amount as the Council (acting reasonably) thinks appropriate if:
 - (i) the Developer does not submit the construction design for the Developer's Works to the Council in accordance with clause 7.2, but only after clause 7.4(b) has been complied with by the Council;

- (ii) the detailed designs for the balance of the Developer's Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;
 - (iii) the Developer's Works do not reach Completion within 60 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed between the parties in writing); or
 - (iv) the Council in exercising its powers under this deed incurs expense or liability.
- (b) The amount appropriated by the Council under paragraph (a) must be applied only towards:
- (i) the costs and expenses incurred by the Council rectifying any default by the Developer under this deed; or
 - (ii) carrying out the Developer's Works; or
 - (iii) carrying out any other works to achieve the Public Benefits as the Council considers appropriate.

5.3 Release of Guarantee

Subject to clause 10.2, if the monies secured by the Guarantee have not been expended and the monies accounted for in accordance with clauses 5.2, then the Council will promptly return the Guarantee to the Developer on the completion of the Developer's Works.

6 REGISTRATION

6.1 Registration of deed

- (a) The Developer agrees to promptly do all things that are necessary for Council to procure the registration of this deed in the relevant folio of the Register for the Land in accordance with section 93H of the Act and in accordance with this clause 6.1.
- (b) The Developer warrants that it has obtained all consents to the registration of this deed on the title to the Land as are necessary and in particular the consent of any mortgagee or leasee for any mortgages or leases that are registered on the title to the Land.
- (c) The Developer must within 20 Business Days of being notified by the Council that this deed has commenced under clause 2.1, produce to the Council:

- (i) a letter from the mortgagee (if any) and lessees of any registered lease on the Land (if any) consenting to the registration of this deed;
 - (ii) a copy of the production slip number as evidence that the certificate of title has been produced to Land and Property Information for the purpose of the registration of the deed; and
 - (iii) a bank cheque for the registration fees payable in relation to the registration of this deed on the title to the Land.
- (d) The Developer must promptly comply with any requisitions that may be raised with regard to registration of the deed from Land and Property Information.
- (e) Subject to clause 6.1(b), 6.1(c) and clause 6.4, the Council will register this deed on the relevant folio of the Register.
- (f) The Council will notify the Developer following registration of the deed by the Council and forward the Developer's copy of the deed to it.

6.2 Release and discharge of deed by Council

The Council must promptly do all things reasonably required by the Developer to release and discharge this deed (such that the deed is no longer registered by the Registrar-General under section 93H of the Act in relation to the Land) where:

- (a) with respect to any part of the Land that does not include the Affordable Housing Lot:
 - (i) the last final Occupation Certificate has been issued in respect of any building on the Land; and
 - (ii) the Council's Representative being satisfied, acting reasonably, that the Developer has provided all of the Contributions (other than the Affordable Housing Contribution) under this deed;
- (b) with respect to the Affordable Housing Lot:
 - (i) a final Occupation Certificate has issued in respect of the Affordable Housing Building; and
 - (ii) the Final Affordable Housing Covenant has been lodged for registration.

6.3 Interest in Land

- (a) The Developer represents and warrants that it is the owner of the Land.

- (b) The Developer represents and warrants that it is legally entitled to obtain all consents and approvals to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 6.

6.4 Caveat

- (a) Without limiting any other provision of this deed, after the date referred to in clause 2.1 and until such time as the registration of this deed is completed, the Developer agrees that Council may, at any time, lodge a caveat over the Land precluding any dealing which is inconsistent with this deed.
- (b) If the Council lodges a caveat in accordance with clause 6.4(a), then the Council must immediately do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
 - (i) this deed;
 - (ii) any plan of consolidation or subdivision contemplated, required or permitted under this deed or any Development Consent;
 - (iii) any other dealing contemplated, required or permitted under this deed or any Development Consent; and
 - (iv) the transfer of any part of the Land to a related body corporate of the Developer or a trust or fund of which a related body corporate of the Developer is trustee, manager or responsible entity.
- (c) Council must promptly do all things reasonably required to remove the caveat from the titles of the Land once this deed has been registered on the titles of the Land.

7 APPROVAL OF DEVELOPER'S WORKS

7.1 Definition of Developer's Works

- (a) The parties agree that the works described in Schedule 5 comprise the Developer's Works for the purposes of this deed. The parties acknowledge and agree that further design detail and refinement are/may be necessary, having regard to the following:
 - (b) the extent to which the design of any part of the Developer's Works have been completed to the reasonable satisfaction of Council (in its capacity as a party to this deed and not as consent authority) at the date of execution of this deed;
 - (c) conditions reasonably affecting the Developer's Works which were not reasonably capable of identification on or before the date of this deed;
 - (d) the extent of any design refinement that may be identified in Schedule 5;

- (e) to take into account a modification to any Development Consent made and approved under section 96 of the Act or any other Development Consent granted in respect of the Developer's Works;
- (f) to take into account the Attributed Value of the Developer's Works; and
- (g) to accommodate the Standards in accordance with the reasonable requirements of the Council.

7.2 Developer to prepare and submit

- (a) The Developer must prepare the detailed description, including design drawings, for the Developer's Works in accordance with the Standards and requirements set out in Schedule 5 (for each Stage), and submit it to Council for approval no later than three months (or such other time as the parties may agree) prior to the date that the Developer makes an application for the relevant Construction Certificate for the Developer's Works.
- (b) The Council's approval referred to in paragraph (a) of this clause 7.2 is not to be unreasonably withheld.

7.3 Notice of plans

The Council must promptly (and in any event within 28 days of submission) give the Developer notice whether or not the design drawings and description of the Developer's Works prepared under clause 7.2(a) are satisfactory. If the design or description are not satisfactory having regard to the Standards, then the Council must identify the further information, or modifications, (as the case may be) which are required so that the Developer's Works comply with the Standards and Schedule 5. The Developer must promptly amend the proposed design to take into account the comments made by the Council under this clause. The Council must act reasonably in relation to this clause.

7.4 If the Developer does not prepare plans for the Developer's Works

- (a) If the Developer:
 - (i) does not prepare plans in accordance with clause 7.2(a) or 7.3; or
 - (ii) does not, within 3 months of the issue of those comments under clause 7.3, amend the plans to take into account the comments made by Council so that the Developer's Works comply with the Standards and Schedule 5.

then, subject to clause 7.4(b), the Council may make an appropriation from the Guarantee for the purposes of carrying out works of the kind contemplated by this deed and generally identified in Schedule 5 in relation to the relevant Stage.

- (b) Before exercising the right conferred in clause 7.4(a) the Council must:
- (i) give notice to the Developer to rectify the non-compliance with clauses 7.2, 7.3 and 7.4(a)(ii) within 10 business days of the non-compliance; and
 - (ii) allow the Developer to rectify the non-compliance with clauses 7.2, 7.3 and 7.4(a)(ii) within 20 business days of receipt of the notice referred to in clause 7.4(b)(i).
- (c) If the Council makes an appropriation under this clause 7.4, the Developer grants the Council a licence for such period as is necessary for the Council to access the Land to carry out, or procure the carrying out, of the Developer's Works.

7.5 No reduction in scope

The Developer acknowledges and agrees that if the design and construction of the Developer's Works exceed the Attributed Value, then the scope of the Developer's Works may not be reduced.

8 FINAL DESIGN OF THE DEVELOPER'S WORKS

8.1 Preparation of the plans and specifications

The Developer must complete construction drawings in accordance with the design developed and approved by Council under clause 7.

8.2 Approval or variation by the Council

The Council, acting reasonably, may, by written notice to the Developer, approve, vary or direct the Developer to vary the construction design drawings for the Developer's Works so as to reflect:

- (a) the Standards;
- (b) a deviation or discrepancy from the plans approved under clause 7;
- (c) any standards, or specifications for the material selection or methodology, adopted by Council from time to time, provided that any direction given under this clause 8.2(c) does not significantly increase:
 - (i) the cost of that element of the Developer's Works; or
 - (ii) the complexity of implementation in a manner which may lead to significant delay in the completion of the balance of the work approved under any relevant Development Consent.

8.3 Directions by the Council

Within 28 days of receiving a notice from Council under the terms of clause 8.2, the Developer must:

- (a) to the extent practicable and using reasonable endeavours, comply with any direction in respect of the design and implementation of the Developer's Works; or
- (b) if the determination is considered to be unreasonable, or impracticable, notify a dispute with that determination in accordance with clause 12 of this deed.

9 CONSTRUCTION OF DEVELOPER'S WORKS

9.1 Insurance

The Developer must from the commencement of the Developer's Works:

- (a) maintain public liability insurance, with an insurer approved by the Council acting reasonably, with the Council identified as an interested party, for an amount not less than \$20,000,000 covering all aspects of the Developer's Works and submit a copy of the certificate of insurance to the Council before the commencement of the construction of the Developer's Works;
- (b) maintain all other reasonably necessary and prudent insurance policies in respect of the Developer's Works including:
 - (i) construction insurance in relation to the Developer's Works;
 - (ii) insurance against death or injury to persons employed or otherwise engaged in relation to the undertaking of the Developer's Works; and
 - (iii) any other insurances required at law; and
- (c) maintain the insurances in clauses 9.1(a) and 9.1(b) until the expiration of the Defects Liability Period.

9.2 Approvals and consents

- (a) The Developer must (at its cost) obtain all relevant approvals and consents for the Developer's Works whether from the Council or any other relevant Authority, including any necessary road opening permit.
- (b) Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents for the Developer's Works (other than any Development Consent).

9.3 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 the approval by Council of plans and any other information submitted under this deed); and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this deed so that they are structurally sound, fit for purpose, and suitable for their intended use; and
- (c) promptly advise the Council's Representative of any significant delays which it experiences in completing the Developer's Works; and
- (d) comply with any reasonable directions from the Council in respect of the construction of the Developer's Works.

9.4 Inspection of Developer's Works

The Council as a party to this deed and not as an authority may (but is not obliged to):

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's representative in good faith of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of such inspection.

The parties expressly agree that any failure to identify a Defect, error and omission, will not be construed as amounting to an acceptance by the Council of that Defect, error or omission.

9.5 Developer's Works Completion

When, in the opinion of the Developer, the Developer's Works have reached completion, the Developer must notify the Council in writing, and must include in that notice:

- (a) a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the Developer's Works have reached completion; and
- (b) copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Developer's Work; and

- (c) at least three (3) sets of the “as built” drawings of the Developer's Work, including one set in electronic format.

9.6 Final inspection by Council

The Council must inspect the Developer's Works within 7 days of notification under clause 9.5 and must within a reasonable period by notice to the Developer either:

- (a) state that Completion has been achieved; or
- (b) state that Completion has not been achieved and (if so, identify the errors or omissions which have been identified and which in the opinion of the Council's Representatives prevent Completion; or
- (c) issue a notice of the nature identified in clause 9.8.

Nothing in this clause 9.6, or in any notice issued under this clause 9.6, will be construed to reduce or waive in any manner the Developer's responsibility to correct minor Defects or minor omissions, whether or not these are identified by Council.

9.7 Date of Completion of Developer's Works

The Developer must ensure that the Developer's Works are capable of reaching Completion on or before the date referred to in clause 1 of Schedule 4.

9.8 Non-completion of Developer's Works

- (a) If the Developer so requests, the Council may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice in writing to the Developer, expressly stating that completion of the items identified in that notice is not required in fulfilment of this deed.
- (b) If the Council permits the Developer not to complete the Developer's Works (or any part of them), the Council may make an appropriation from the Guarantee in such amount as the Council considers necessary to complete the Developer's Works (or any part of them).
- (c) If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under any Development Consent or this deed, then Council in its discretion may either:
 - (i) complete the Developer's Works; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in this deed or any Development Consent,

and may recover all costs of and reasonably incidental to that work from the Developer. The Council may apply the monies secured from the Guarantee and (to the extent that expenditure exceeds the amount secured) recover any shortfall from the Developer as a debt due and owing.

- (d) If the Council determines to complete the Developer's Works under this clause 9.8, the Developer grants the Council a licence for such period as is necessary for the Council to access the Land to carry out, or procure the carrying out, of the Developer's Works.

9.9 Indemnity by the Developer

The Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any act or omission by the Developer (or any person engaged by them, including any contractor) in connection with the performance of the Developer's obligations under the terms of this deed, except where the damage, expense, loss or liability suffered or incurred by the Council is caused by, or contributed to, by any wilful or negligent act or omission of the Council (or any person engaged by it, including any contractor).

10 DEFECTS LIABILITY PERIOD

10.1 Defects in the Developer's Works

If the Council notifies the Developer of a Defect in the Developer's Works within the Defects Liability Period, then the Developer must remedy that Defect to the reasonable satisfaction of the Council, within a reasonable period (having regard to the nature of the Defect).

10.2 Security for Defects Liability Period

Until the expiration of the Defects Liability Period, the Council may retain from the Guarantee an amount equal to 10% of the Attributed Value as security for the performance by the Developer of its obligations under this clause 10 and the Developer must make any necessary arrangements to allow that to occur.

10.3 Application of Security

- (a) If the Developer does not rectify any Defect in the Developer's Works duly notified under clause 10.1 within 3 months of of the notice or as otherwise agreed between the parties, then the Council may:
- (i) rectify the Defect in the Developer's Works:
 - (ii) after giving the Developer not less than 21 days written notice of the amount to be returned, may make an appropriation from the Guarantee retained in accordance with clause 10.2 for the costs of and arising from the rectification; and
 - (iii) (to the extent that the costs exceed the Guarantee held) may recover the reasonable costs from the Developer as a debt due and owing.

- (b) If the Council determines to rectify any Defects in the Developer's Works under this clause 10.3, the Developer grants the Council a licence for such period as is necessary for the Council to access the Land to carry out, or procure the carrying out, of those rectification works.

11 EXPENDITURE BY THE COUNCIL

11.1 Expenditure by the Council

If the Council carries out the Developer's Works under clause 7.4 or 9.8, then the Council:

- (a) is not required to expend more money than is secured by the Guarantee. The Council may in its discretion elect not to carry out items of Developer's Works to ensure that the Developer's Works can be achieved for an amount equal to, or less than, the amount secured by the Guarantee at that time; or
- (b) acting reasonably, may expend more money than is secured by the Guarantee in order to deliver the Developer's Works.

11.2 Debt due and owing to the Council

Subject to the Council giving the Developer not less than 21 days written notice of an approximate amount it expects to be expended in carrying out or rectifying the Developer's Works prior to such carrying out or rectification, if Council expends more money than is secured by the Guarantee in either carrying out or in rectifying the Developer's Works (whether that expenditure is incurred under clause 11.1 or 10.3), then the amount in excess of the Guarantee will be deemed to be a debt immediately due and owing to the Council by the Developer.

12 DISPUTE RESOLUTION

12.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 12.

12.2 Written notice of dispute

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

12.3 Attempt to resolve

On receipt of notice under clause 12.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

12.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 12.2 (or any further period agreed in writing by them) as to:

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

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

12.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 12.2 then any party which has complied with the provisions of this clause 12 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

12.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 12 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 12 for any purpose other than in an attempt to settle the dispute.

12.7 No prejudice

This clause 12 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

13 GST**13.1 Definitions**

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

13.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

13.3 Reimbursement

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

13.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 13.

13.5 Additional Amounts for GST

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

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

13.6 Non monetary consideration

Clause 13.5 applies to non-monetary consideration.

13.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 13.5 the Developer will assume the Council is not entitled to any input tax credit.

13.8 No merger

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

14 ASSIGNMENT AND NOVATION

14.1 Consent

This deed is personal to each party and no party may assign the rights or benefits of this deed to any person except:

- (a) to a Related Entity, after obtaining the consent of the other parties, which the other parties must not withhold if it is reasonably satisfied that the related body corporate has sufficient assets, resources and expertise to perform all of the assigning party's obligations under this deed; or
- (b) to any other person, with the prior consent of the other parties, provided that such consent must not be unreasonably withheld.

14.2 Developer's right to assign or novate

- (a) Prior to seeking the consent of the Council to a proposed assignment or novation of its rights or obligations under this deed, the Developer must:
 - (i) satisfy the Council, who must act reasonably and without delay, that the person to whom the Developer's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Developer's obligations under this deed insofar as those obligations have been novated to the Incoming Party; and
 - (ii) procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council who must act reasonably and without delay, under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party was the Developer.
- (b) The Developer will pay the Council's reasonable costs and expenses incurred under this clause 14.2.

14.3 Developer's right to transfer Land

- (a) Once this deed becomes operative under clause 2.1, the Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.
- (b) After this deed has been signed and submitted to the Council and before the date of the Notification, the Developer must not sell the Land (or any part of it) unless it notifies the Council in writing and it obliges the purchaser to enter into a deed on the same terms as this deed with the Council prior to the Land (or any part of it) being transferred to that purchaser.

- (c) Notwithstanding clause 14.3(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
- (i) satisfies the Council acting reasonably and without delay that the Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Developer under this deed or satisfies the Council acting reasonably and without delay that the Developer will continue to be bound by the terms of this deed after the transfer has been effected; and
 - (ii) satisfies the Council acting reasonably and without delay that it is not in material breach of its obligations under this deed.
- (d) The Developer will pay the Council's reasonable costs and expenses incurred under this clause 14.3.

15 CAPACITY

15.1 General warranties

Each party warrants to each other party that:

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

15.2 Power of attorney

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

16 OBLIGATIONS IF RELEVANT LEGAL CHALLENGE

16.1 Obligations if relevant legal challenge

- (a) Notwithstanding anything else in this deed, and subject to clause 16.1(b), the Council agrees that in the event that a Relevant Legal Challenge is commenced:
 - (i) the Developer's obligation to create the Affordable Housing Lot is suspended;
 - (ii) the Developer's obligation under this deed to create and transfer the Road Lot is suspended and the Council cannot require the Developer to transfer or dedicate the Road Lot;

- (iii) the Developer's obligation under this deed to create and register the Public Positive Covenant and Through-Site Link Easement is suspended and the Council cannot require the Developer to create and register the Public Positive Covenant or the Through-Site Link Easement;
 - (iv) the consent provided under this deed by the Developer to the compulsory acquisition of the Road Lot is withdrawn, is of no effect and the Council cannot compulsorily acquire the Road Lot pursuant to this deed;
 - (v) the consent provided under this deed by the Developer to the compulsory acquisition of the Public Positive Covenant and the Through-Site Link Easement is withdrawn, is of no effect and the Council cannot compulsorily acquire the Public Positive Covenant and the Through-Site Link Easement pursuant to this deed;
 - (vi) the Developer's obligation under this deed to carry out and complete the Affordable Housing Building is suspended;
 - (vii) the Developer's obligation under this deed to deliver the ESD Required Targets is suspended; and
 - (viii) the Developer's obligation under this deed to carry out and complete the Developer's Works is suspended.
- (b) Clause 16.1(a) has effect only for the Suspension Period.
- (c) If, at the end of the Suspension Period, there is no effective Court declaration or order that any Development Consent and/or this deed is invalid, the parties agree that from (and including) the Suspension Expiry Date:
- (i) the Developer's obligation to create the Affordable Housing Lot has full legal force and effect;
 - (ii) the Developer's obligation under this deed to transfer or dedicate of the Road Lot has full legal force and effect and where the Developer has not transferred or dedicated the whole or any part of the Road Lot to the Council by the Suspension Expiry Date, the Developer must transfer or dedicate the Road Lot to the Council by the dates or times referred to in Schedule 4 or such other time as agreed with Council;
 - (iii) the Developer gives its consent to the Council compulsorily acquiring the Road Lot upon the terms agreed in this deed;
 - (iv) the Developer's obligation under this deed to create and register the Public Positive Covenant and the Through-Site Link Easement

has full legal force and effect and where the Developer has not created and registered the Public Positive Covenant and Through-Site Link Easement by the Suspension Expiry Date, the Developer must create and register the Public Positive Covenant and Through-Site Link Easement by the dates or times referred to in Schedule 4 or such other time as agreed with Council;

- (v) the Developer gives its consent to the Council compulsorily acquiring the Public Positive Covenant and Through-Site Link Easement upon the terms agreed in this deed;
 - (vi) the Developer's obligation under this deed to carry out and complete the Affordable Housing Building has full legal force and effect;
 - (vii) the Developer's obligation under this deed to deliver the ESD Required Targets has full legal force and effect; and
 - (viii) the Developer's obligation under this deed to carry out and complete the Developer's Works has full legal force and effect.
- (d) If, at the end of the Suspension Period, there is an effective Court declaration or order that any Development Consent and/or this deed is invalid, the parties agree that from (and including) the Suspension Expiry Date, where the Developer has:
- (i) Transferred the whole or any part of the Road Lot to the Council or the Council has compulsorily acquired the Road Lot under this deed by the Suspension Expiry Date, the provisions of clause 16.2(a) and 16.2(b) apply; or
 - (ii) not procured the transfer or dedication of the whole or any part of the Road Lot to the Council by the Suspension Expiry Date:
 - (A) the Developer has no obligation to transfer or dedicate the whole or part of the Road Lot and the Council cannot require the Developer to procure the transfer or dedication of the Road Lot; and
 - (B) the consent provided under this deed by the Developer to the compulsory acquisition of the Road Lot is withdrawn, is of no effect and the Council cannot compulsorily acquire the Road Lot pursuant to this deed.
- (e) If, at the end of the Suspension Period, there is an effective Court declaration or order that any Development Consent and/or this deed is invalid, the parties agree that from (and including) the Suspension Expiry Date, where the Developer has:

- (i) created and registered the Public Positive Covenant and Through-Site Link Easement by the Suspension Expiry Date, the provisions of clause 16.2(c) apply; or
- (ii) not created and registered the Public Positive Covenant and the Through-Site Link Easement by the Suspension Expiry Date:
 - (A) the Developer has no obligation to create and register the Public Positive Covenant and the Through-Site Link Easement under this deed and the Council cannot require the Developer to create and register the Public Positive Covenant and the Through-Site Link Easement; and
 - (B) the consent provided under this deed by the Developer to the compulsory acquisition of the Public Positive Covenant and the Through-Site Link Easement is withdrawn, is of no effect and the Council cannot compulsorily acquire the Public Positive Covenant and the Through-Site Link Easement pursuant to this deed.
- (f) If, at the end of the Suspension Period, there is an effective Court declaration or order that any Development Consent and/or this deed is invalid, the parties agree that from (and including) the Suspension Expiry Date:
 - (i) the Developer is not required to carry out and complete the Affordable Housing Building or the Developer's Works;
 - (ii) the Developer is not required to deliver the ESD Required Targets;
 - (iii) the Developer has no obligation to register this deed on the titles to the Land;
 - (iv) the Council has no right to lodge a caveat over the Land and in the event a caveat or caveats has been lodged over the Land under clause 6.4, the Council must proceed to register at Land and Property Information a withdrawal of that caveat in respect of that Land within 5 business days of that Court declaration or order.

16.2 Re-transfer of land and release of covenants

- (a) In the event that clause 16.1(d)(i) applies to the Road Lot, unless agreed otherwise by the parties, the Council agrees to re-transfer or procure the re-transfer to the Developer the Road Lot within 20 business days of a request in writing from the Developer.
- (b) In the event the Council is required to re-transfer to the Developer the Road Lot pursuant to clause 16.1(a) the Council agrees to:

- (i) deliver, or procure to be delivered, to the Developer:
 - (A) a form of transfer in respect of the Road Lot in favour of the Developer for a consideration of \$1, executed by the Council and in registrable form except for acceptance by the Developer and marking by the Office of State Revenue;
 - (B) the certificate or certificates of title for the Road Lot;
 - (C) any consents and other documentation in registrable form required for the transfer (and registration) of the Road Lot,
- (ii) take any other necessary action to give effect to the transfer of the title of the Road Lot to the Developer free of any encumbrances and affectations that were created after the date that the Council acquired that land (by way of transfer, dedication or compulsory acquisition) other than any obligation to pay any stamp duty and other taxes, charges and imposts in relation to the re-transfer of the Road Lot.
- (c) In the event that clause 16.1(e)(i) applies, unless agreed otherwise by the parties, the Council must consent to the release of the Public Positive Covenant and the Through-Site Link Easement within 10 business days after a request in writing from the Developer.

17 GENERAL PROVISIONS

17.1 Entire deed

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

17.2 Variation

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

17.3 Waiver

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

17.4 Further assurances

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

17.5 Time for doing acts

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

17.6 Governing law and jurisdiction

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

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

17.8 Preservation of existing rights

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

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

17.10 Counterparts

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

17.11 Relationship of parties

Unless otherwise stated:

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

17.12 Good faith

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

17.13 No fetter

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

17.14 Explanatory note

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

17.15 Expenses and Taxes

- (a) The Developer must pay its own and the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed including any stamp duty that may be payable by the Council in respect of Land transferred to an Authority.
- (d) The Developer must provide the Council with bank cheques in respect of the Council's costs pursuant to clauses 17.15(a) and (b):
 - (i) where the Council has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Council has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Council for payment.

17.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
- (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
- (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2)

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

REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning instrument and/or development application – (section 93F(2))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
<p>Description of land to which this deed applies – (section 93F(3)(a))</p>	<p>See Schedule 3</p>
<p>Description of change to the environmental planning instrument to which this deed applies and/or the development to which this deed applies – (section 93F(3)(b))</p>	<p>The Development as defined in clause 1.1</p>
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</p>	<p>See Schedule 4</p>
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	<p>The application of sections 94 and 94A of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections 94 or 94A will be required to be paid</p>
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	<p>The application of section 94EF of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 94EF will be required to be paid</p>
<p>Consideration of benefits under this deed</p>	<p>No</p>

REQUIREMENT UNDER THE ACT	THIS DEED
if section 94 applies – (section 93F(5))	
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 12
Enforcement of this deed – (section 93F(3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 17.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 6)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

SCHEDULE 2

Address for Service (clause 1.1)

Council

Contact: Director City Planning, Development and Transport

Address: Town Hall House
465 Kent Street
SYDNEY NSW 2000

Facsimile No: (02) 9265 9222

Developer

Contact: Anthony Elias

Address: Level 1
179 Victoria Road
Drummoyne NSW 2047

Facsimile No: (02) 9181 4598

SCHEDULE 3

Land (clause 1.1)

1 Lots proposed for development

Lot	Deposited Plan	Folio Identifier	Developer
1	874988	1/874988	M.T. Management Pty Ltd

SCHEDULE 4

Contributions (clause 4)

1 Contributions

The Developer undertakes to provide the Contributions in accordance with this Schedule and in the manner set out in the table below:

Contributions	Timing
Affordable Housing Contribution	<p>(a) Creation of the Affordable Housing Lot – prior to the issue of the first Occupation Certificate that relates to any part of Development within Stage 1.</p> <p>(b) Carrying out and Completion of the Affordable Housing Building – prior to the issue of the first Occupation Certificate that relates to any part of Development within Stage 1.</p> <p>(c) Creation and registration of the Initial Affordable Housing Covenant – see clause 2.3(a)(i) of this Schedule.</p> <p>(d) Creation and registration of the Final Affordable Housing Covenant – see clause 2.3(a)(ii) of this Schedule.</p>
Developer's Works Contribution	<p>Carrying out and completion of the Developer's Works in relation to each Stage – prior to the issue of the first Occupation Certificate in respect of any part of the Land affected by the relevant Stage.</p>
ESD Contribution	<p>Delivery of the ESD Required Targets in relation to each Stage – prior to the issue of the first Occupation Certificate in respect of any part of the Land affected by the relevant Stage.</p>
Road Contribution	<p>Creation and dedication of the Road Lot - prior to the issue of the first Occupation Certificate in respect of any part of the Land.</p>
Through-Site Link Contribution	<p>Creation and registration of the Through-Site Link Easement - prior to the issue of the first Occupation Certificate in respect of the part of the Land affected by the Through-Site Link</p>

	Easement.
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2 Affordable Housing Contribution

2.1 Construction of the Affordable Housing Building

The Developer must construct the Affordable Housing Building in accordance with any relevant Development Consent.

2.2 Creation of the Affordable Housing Lot

The Developer agrees to register a Plan of Subdivision to create the Affordable Housing Lot prior to the issue of the first Occupation Certificate in respect of the Affordable Housing Building.

2.3 Public Positive Covenant

- (a) The Developer must:
- (i) create and register the Initial Affordable Housing Covenant over the Land at the same time that this deed is registered under clause 6.1 of this deed; and
 - (ii) at the same time as the Plan of Subdivision is lodged to create the Affordable Housing Lot, remove the Initial Affordable Housing Covenant from the Land and create and register the Final Affordable Housing Covenant over the Affordable Housing Lot.
- (b) The Developer must comply with any reasonable directions by Council or Council's Representative in respect of the terms of the Public Positive Covenant and the registration of the Public Positive Covenant.
- (c) The Developer must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the creation or removal of the Public Positive Covenant.

2.4 Compulsory acquisition

- (a) If the Developer does not procure the registration of the Public Positive Covenant under clause 2.3 of this Schedule, the Developer consents to the Council compulsorily acquiring the Public Positive Covenant in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- (b) The Developer and the Council agree that in relation to the acquisition of the Public Positive Covenant:
- (i) clause 2.4(a) of this Schedule is an agreement between the Developer and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and

- (ii) in clause 2.4(a) of this Schedule, the Developer and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person, other than the Developer.

2.5 Reimbursement of Council's costs

The Developer must reimburse the Council, promptly on demand, an amount equivalent to all reasonable costs incurred by the Council in acquiring the Public Positive Covenant pursuant to clause 2.4 of this Schedule.

3 Developers Work's Contribution

The Developer must, in relation to each Stage:

- (a) carry out the Developer's Works in accordance with clauses 7, 8, and 9 of this deed; and
 - (b) achieve Completion of the Developer's Works,
- within the timeframes specified in clause 1 of this Schedule.

4 ESD Contribution

The Developer must demonstrate to the Council in writing that it has achieved or can achieve the ESD Required Targets within the timeframes specified in clause 1 of this Schedule.

5 Road Contribution

5.1 Creation of the Road Lot

- (a) The Developer agrees to:
 - (i) register a Plan of Subdivision to create the Road Lot; and
 - (ii) deliver to Council:
 - (A) a form of transfer in respect of the land comprising the Road Lot, executed by the Developer and in registrable form; and
 - (B) the certificates of title for the Road Lot,

and must take any other necessary action to give effect to the transfer of the title of the Road Lot to Council free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) but excluding any easements or covenants created with the Plan of Subdivision or under the terms of this deed, prior to the issue of the first Occupation Certificate in respect of the any part of the Land.

- (b) The Developer must promptly comply with any requisitions raised by the Registrar-General in relation to the transfer of the Road Lot.
- (c) The Developer will pay all rates and taxes owing in respect of the Road Lot up to and including the date that the Developer delivers the form of transfer and certificates of title for the Road Lot pursuant to clause 5.1(a) of this Schedule.

5.2 Compulsory acquisition

- (a) If the Developer does not procure the transfer of the Road Lot in accordance with clause 5.1(a) of this Schedule, the Developer consents to the Council compulsorily acquiring the Road Lot in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- (b) The Developer and the Council agree that in relation to the acquisition of the Road Lot:
 - (i) clause 5.2(a) of this Schedule is an agreement between the Developer and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in clause 5.2(a) of this Schedule, the Developer and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (c) The Developer indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person, other than the Developer.

5.3 Reimbursement of Council's costs

The Developer must reimburse the Council, promptly on demand, an amount equivalent to all reasonable costs incurred by the Council in acquiring the Road Lot pursuant to clause 5.2 of this Schedule.

6 Through-Site Link Contribution

6.1 Through-Site Link Easement

- (a) The Developer must create and register the Through-Site Link Easement.
- (b) The Developer must comply with any reasonable directions by Council or Council's Representative in respect of the terms of the Through-Site Link Easement and the registration of the Through-Site Link Easement.
- (c) The Developer must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the creation of the Through-Site Link Easement.

6.2 Compulsory acquisition and reimbursement of Council's costs

Clauses 5.2 and 5.3 of this Schedule 4 apply mutatis mutandis to the registration of the Through-Site Link Easement, except that the references in those clauses to the "Road Lot" are taken to be references to the "Through-Site Link Easement".

7 Easements and lots

The parties expressly agree that:

- (a) the final dimensions of the Affordable Housing Lot, the Through Site Link Easement and the Road Lot are subject to any final Development Consent and survey and may be created by one or more Plans of Subdivision,
- (b) the site of the Through-Site Link Easement is to:
 - (i) run between Wentworth Park Rd and Wentworth St;
 - (ii) be limited in depth to the top of the slab;
 - (iii) be uninterrupted and unlimited in height;
 - (iv) have a minimum width of 7 metres.
- (c) the Public Positive Covenant and the Through-Site Link Easement:
 - (i) are not in registrable form;
 - (ii) may be amended as agreed between the parties; and
 - (iii) may take any registrable form as agreed between the parties.

SCHEDULE 5

Developer's Works

The following works must be constructed to the Standards and in accordance with this deed:

- 1 Construction and embellishment of the through-site link over the site of the Through-Site Link Easement; and
- 2 Construction and embellishment of the Road Lot to Council's standard footpath requirements.

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SCHEDULE 6**Standards****1 General**

The standards referred to in this schedule are included for information purposes only, and as a guide to the relevant standards for the general nature of the work of the kind identified as Developer's Works in this agreement. The Council makes no representation or warranty whatsoever as to the currency of the standards identified, or their application to the final design of any particular element. If any standard is replaced or supplemented, then a reference will be deemed to include any other standards as may replace or supplement that standard.

2 Conflict

In the event that any Australian Standard prescribes or describes a different level of material, finish, work or workmanship, than those contained in any Council Standard, then the higher of the two standards will apply. In the event that one or more Council Standards conflict with another Council Standard, then the Council must nominate the correct and applicable Council Standard. The Council's decision as to the applicable standard in the event of conflict is final.

3 Australian Standards

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 4454 Composts, soil conditioners and mulches
- AS 1720 Timber structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1428 Design for Access and Mobility
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1743 Road signs
- AS4586 Slip Resistance Classification of New Pedestrian Surface Materials
- AS 3500 Plumbing and Drainage

- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1742 Manual of uniform traffic control devices

4 **Council Standards (All Works)**

- City of Sydney Contaminated Lands DCP 2004
- Draft I Sydney Street Design Code
- Interim draft Sydney Lights Design Code
- City of Sydney Access Policy
- City of Sydney Public Domain Manual
- City of Sydney Awning Policy
- City of Sydney Street Tree Masterplan

SCHEDULE 7

Part A - Through-Site Link Easement

1 INTERPRETATION

1.1 Definitions

In this Instrument:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under the Act.

Authorised User means every person authorised by the Council for the purposes of the Easement created by this Instrument, including:

- (a) employees, agents, servants, contractors, workmen and licensees of the Council; and
- (b) members of the public.

Council means the Council of the City of Sydney and its successors.

Development Consent means the consent, as modified from time to time under section 96 of the Act, granted to the development application No [] in respect of the Site and lodged with Council.

Easement means the easement in this Instrument and includes the conditions in relation to that easement.

Easement Site means, in relation to the Easement in this Instrument:

- (a) the site of the Easement on the Plan, including any limitations by height or depth; and
- (b) all items within the site of the Easement identified on the Plan which are the subject of the Easement.

Emergency Situation means any circumstance involving a need, for reasons of safety, for evacuation or egress from a building or other place, including fire, earthquake, flooding, terrorist activity and any training or test of such evacuation or egress.

Instrument means this instrument under section 88B of the *Conveyancing Act 1919* (NSW).

Lot Burdened means the Site being the land burdened by the Easement, or any part of it.

Owner of the Lot Burdened means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.

Plan means

Site means the land known as 87 Bay Street, Glebe, comprising folio identifier 1/874988.

1.2 Interpretation

- (a) The singular includes the plural and the plural includes the singular.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument.
- (e) Unless stated otherwise, one provision does not limit the effect of another provision.
- (f) A reference to any law or to any provision of any law includes any modification or re-enactment of it, any legislative provisions substituted for it and all regulations and statutory instruments issued under it or them.
- (g) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (h) Headings in this Instrument are for information purposes only and do not affect the interpretation of this Instrument.
- (i) A reference to 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.
- (j) An agreement on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally.
- (k) **Includes** means includes but without limitation.

1.3 Conditions

Each of the provisions of this Easement will constitute and be covenants and agreements by and between the Owner of the Lot Burdened and the Council for themselves and their respective successors, assigns and transferees with the intention and agreement that the benefit and burden of such covenants and agreements will pass with the benefit and burden of the Easement.

1.4 No fetter

- (a) Nothing in this Instrument in any way restricts or otherwise affects the unfettered discretion of the Council in the exercise of its statutory powers as a public authority.
- (b) If any conflict arises between the unfettered discretion of the Council in the exercise of its powers as a statutory authority and the performance of any right or obligation in this Instrument, the former prevails.

1.5 Limitation of Trustee's Capacity and Liability

- (a) If this Instrument binds an entity in its capacity as a trustee or responsible entity (Trustee) of a trust (the Trust) it binds the Trustee only in its capacity as trustee or responsible entity of the Trust and in no other capacity. A liability arising under or in connection with this Instrument is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Instrument and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Instrument.
- (b) No party to this Instrument may sue the Trustee in any capacity other than as the responsible entity or trustee of the Trust (as the case may be), including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (c) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the deed constituting the trust or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as responsible entity or trustee (as the case may be) of the Trust.
- (d) Nothing in clause (c) shall make Trustee liable to any claim for an amount greater than the amount which any party entitled to make a claim under this Instrument would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
- (e) The Responsible Entity/Trustee is not obliged to do or refrain from doing anything under this Instrument (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

1.6 GST

- (a) In this clause 1.6:
- (i) **GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
 - (ii) terms used in this clause which are not defined in this Instrument, but which are defined in the GST Law, have the meanings given in the GST Law.
- (b) Unless otherwise stated in this Instrument, amounts payable, and consideration to be provided, under any other provision of this Instrument exclude GST.
- (c) If GST is payable on a supply made in connection with this Instrument, the recipient must pay the party making the supply (supplier) an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice to the recipient.
- (d) If an adjustment event arises in connection with a supply made in connection with this Instrument:
- (i) the supplier must recalculate the GST payable to reflect the adjustment event;
 - (ii) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
 - (iii) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (e) If a payment to a party under this Instrument is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, the payment will be:
- (i) reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense; and
 - (ii) then, increased by an amount equal to the GST payable if and to the extent that the payment is consideration for a taxable supply.

2 TERMS OF RIGHT OF PUBLIC ACCESS

2.1 Terms of the Easement

Subject to clauses 2.3, 2.4 and 2.5, the Owner of the Lot Burdened grants:

- (a) to the Council and its Authorised Users full and free right to go, pass and repossess over the Easement Site at all times:
 - (i) on foot or with wheelchairs or other disabled access aids, but excluding all other vehicles; and
 - (ii) with or without animals,for all lawful purposes; and
- (b) to the Council the right to erect within the Easement Site such artworks, street furniture, directional signage and other improvements which the Council considers consistent with the purpose of the Easement Site specified in clause 2.2, provided the Council obtains the consent of the Owner of the Lot Burdened to such erection (which consent may not be unreasonably withheld) and the Council maintains all such improvements at its cost.

2.2 Purpose of Easement

Subject to clause 2.1(b), the Council and the Owner of the Lot Burdened acknowledge and agree that the Easement is being provided at no cost to the public and is for the purpose of providing access over the Easement Site to any member of the public and to permit Council works to the Easement Site.

2.3 Works to Lot Burdened

- (a) Subject to ensuring access for the purpose set out in clause 2.2 and compliance with the requirements of clause 2.4 the Owner of the Lot Burdened may:
 - (i) carry out works of any nature on or about the Lot Burdened, including without limitation constructing, installing, removing, redeveloping or otherwise changing improvements on or about the Easement Site;
 - (ii) permit doors to open out into the Easement Site; and
 - (iii) install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor retail premises, notice boards or any other improvement at ground level within the Easement Site.

- (b) For the avoidance of doubt, any improvements or encroachments on the Easement Site that have been approved under the Development Consent are not in breach of this Instrument.

2.4 Restrictions on access

The Owner of the Lot Burdened may temporarily close, or temporarily restrict access through part (but not all) of the Easement Site for the purpose of, or as a result of:

- (a) the construction, repair or maintenance of any improvement on the Site (including the use of vehicles and equipment for those purposes); or
- (b) carrying out obligations under clause 3.1 or any other obligation under this Instrument;
- (c) providing access to the relevant electricity authority to gain access to the high voltage electrical cables which are located beneath part of the Easement Site for any necessary inspection or maintenance or in the event of an Emergency Situation relating to the high voltage electrical cables.

provided that:

- (d) such restriction is for a period not exceeding one month or such other period of time as agreed by the Council;
- (e) where the restriction is for a period not exceeding 24 hours, the Owner of the Lot Burdened takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1; and
- (f) where the restriction is likely to be for a period for between 24 hours and up to one month, the Owner of the Lot Burdened:
 - (i) obtains the prior written consent of the Council and complies with any conditions imposed on that consent; and
 - (ii) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1.

2.5 Emergencies

- (a) The Owner of the Lot Burdened may restrict temporarily access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Council and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible.
- (b) The Council or the Owner of the Lot Burdened may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public if either of them reasonably forms the view that such access is unsafe.

- (c) Despite any other provision of this Instrument:
- (i) the Owner of the Lot Burdened must at all times allow the Easement Site to be used for access by all emergency and other essential service organisations; and
 - (ii) the Owner of the Lot Burdened must not interfere with such access.

2.6 Indemnity

The Owner of the Lot Burdened indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council and any of its Authorised Users except where the claim or damage is caused by, or contributed to by, the wilful or negligent act or omission of the Council or its Authorised Users.

2.7 Persons empowered to release, vary or modify the Right of Public Access

This Right of Public Access may only be released, varied or modified with the consent of both the Council and the Owner of the Lot Burdened.

3 TERMS OF POSITIVE COVENANT IN RELATION TO THE RIGHT OF PUBLIC ACCESS

3.1 Maintenance of Easement Site

Subject to clause 2.1(b), the Owner of the Lot Burdened must:

- (a) at all times, maintain the Easement Site (including the lighting) in good repair;
- (b) not permit the Easement Site to fall into disrepair so that the use of the Easement Site becomes unsafe, impractical or impossible; and
- (c) keep the Easement Site clean and free from rubbish; and
- (d) if required by Council, upgrade and refurbish the Easement Site if the condition of the Easement Site becomes degraded and damaged,

in accordance with the reasonable requirements of, and to the reasonable satisfaction of, the Council, including in accordance with the requirements of the Council's Public Domain Manual.

3.2 Public Liability Insurance

- (a) The Owner of the Lot Burdened must take out and maintain a public liability insurance policy with respect to any liabilities to the Council or any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by the Council (acting reasonably).

- (b) The policy referred to in paragraph 3.2(a) must:
- (i) note the Council as an interested party; and
 - (ii) be taken out and maintained with an insurer licensed by the Australian Prudential Regulation Authority to operate in Australia or have an investment grade security rating from an industry recognised rating agency such as Standard and Poors, Moodys or Bests.

3.3 Persons empowered to release, vary or modify the Positive Covenant

This Instrument may only be released, varied or modified with the consent of both Council and the Owner of the Lot Burdened.

Part B - Initial Affordable Housing Covenant

1 INTERPRETATION

1.1 Definitions

In this Instrument:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under the Act.

Affordable Housing has the same meaning as in the Act.

Council means the Council of the City of Sydney and its successors.

Gross Floor Area has the same meaning as in the *Sydney Local Environmental Plan 2012*.

Land Burdened means the land, or any part of it, in relation to which this Positive Covenant is registered.

Owner of the Land Burdened means every person who is at any time entitled to an estate or interest in the Land Burdened, including any freehold or leasehold estate or interest in possession in the Land Burdened or any part of the Land Burdened.

2 TERMS OF PUBLIC POSITIVE COVENANT

2.1 Terms of covenant

The Owner of the Land Burdened must ensure that for any building(s) constructed on the Land Burdened:

- (a) where a floor space ratio for the development over the whole of the Land Burdened is approved above 1.5:1, no less than 7.5% of the Gross Floor Area of the development above 1.5:1 is used or intendeds to be used for Affordable Housing purposes; or

- (b) no less than 7.5% of all residential Gross Floor Area approved in relation to the development over the whole of the Land Burdened is used or intendeds to be used for Affordable Housing purposes,

whichever is the greater.

2.2 Persons empowered to release, vary or modify the Positive Covenant

This Positive Covenant may only be released, varied or modified with the consent of both Council and the Owner of the Land Burdened.

Part C - Final Affordable Housing Covenant

1 INTERPRETATION

1.1 Definitions

In this Instrument:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under the Act.

Affordable Housing has the same meaning as in the Act.

Affordable Housing Provider means a class 1 community housing provider registered as a growth provider or a class 2 community housing provider under Part 9A of the *Housing Act 2001* (NSW).

Council means the Council of the City of Sydney and its successors.

Land Burdened means the land, or any part of it, in relation to which this Positive Covenant is registered.

Owner of the Land Burdened means every person who is at any time entitled to an estate or interest in the Land Burdened, including any freehold or leasehold estate or interest in possession in the Land Burdened or any part of the Land Burdened.

2 TERMS OF PUBLIC POSITIVE COVENANT

2.1 Terms of covenant

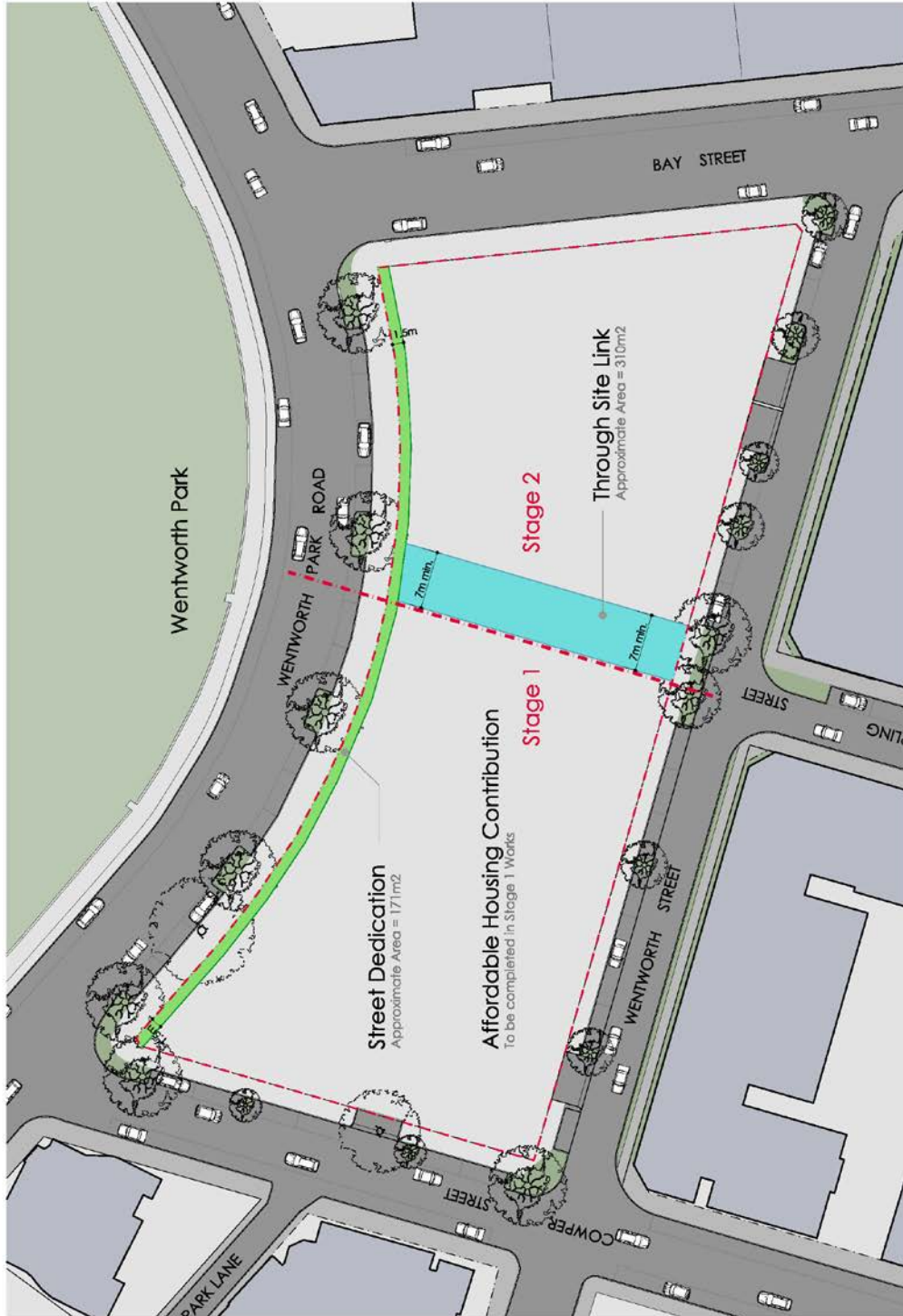
The Owner of the Land Burdened covenants that it will maintain all dwellings on the Burdened Land to be used for Affordable Housing purposes and that the Land Burdened will be managed by an Affordable Housing Provider.

2.2 Persons empowered to release, vary or modify the Positive Covenant

This Positive Covenant may only be varied or modified with the consent of both Council and the Owner of the Land Burdened.

SCHEDULE 8

Plan



Indicative Staging Plan

scale 1 : 500 @ A3 date : March 2013

M & T Management Pty Ltd

87 BAY STREET, GLEBE

EXECUTED as a deed

Signed sealed and delivered for and on)
behalf of **The Council of the City of**)
Sydney ABN 22 636 550 790 in the)
presence of:

.....
Signature of Witness

.....
Signature of The Council of the City of
Sydney

.....
Name of Witness in full

.....
The Council of the City of Sydney

Signed sealed and delivered by M.T.)
Management Pty Ltd ACN 082 084 062 in)
accordance with section 127 of the)
Corporations Act)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director

.....
Name of Director/Secretary