

ATTACHMENT C

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**DRAFT VOLUNTARY PLANNING
AGREEMENT**

810-822 ELIZABETH STREET, WATERLOO



PLANNING AGREEMENT

810 ELIZABETH STREET WATERLOO

BETWEEN

THE COUNCIL OF THE CITY OF SYDNEY

and

WATERLOO LANDHOLDING PTY LTD (ACN 155 177 727))

The Council of the City of Sydney
Legal Services - Level 10, Town Hall House
456 Kent Street
SYDNEY NSW 2000
REF: AMH/S107196 EXHIBITION DRAFT 20.09.13

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Witness:
Name (printed):

Marcia Claire Doheny

Signature:
Name (printed):

Signature:
Name (printed):

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PLANNING AGREEMENT

Dated day of 2013

PARTIES

1. **COUNCIL OF THE CITY OF SYDNEY** of 456 Kent Street, Sydney, New South Wales (**Council**); and
2. **WATERLOO LANDHOLDING PTY LTD (ACN 155 177 727)** whose registered office is situate at 135-153 New South Head Road Edgecliff N.S.W. 2027 (**Developer**)

BACKGROUND

- A. The Developer is the owner of the Land.
- B. On **28 May 2013** the Development Application was lodged with the Council to carry out the Development on the Land.

OPERATIVE PROVISIONS

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by Part 4 of the Act.

2 SCOPE AND APPLICATION OF THIS AGREEMENT

This Agreement binds the parties and applies to the Land on which the Development is to be carried out by the Developer. This Agreement **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) s. 94 of the Act;
- (b) s. 61 of the City of Sydney Act;
- (c) Affordable Housing Levy;
- (d) any other statute or instrument that may apply to the land or to the development application.

For the purposes of section 93F(5) of the Act, the parties expressly agree that this Planning Agreement does not exclude the operation of section 94 of the Act, and conditions may be imposed in respect of the contributions identified in (a) to (d) (inclusive).

3 OPERATION OF THIS AGREEMENT

This Agreement takes effect on the date of this Agreement after execution by both parties.

4 DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Agreement the following definitions apply:

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

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 9.5(a) or (c), 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.

Construction Costs means the construction cost of the Developers Works, as determined by the Council in accordance with clause 7.5.

Council's Representative means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Agreement, or such other person as may be nominated by the person occupying the role of General Manager of the Council from time to time.

Council Works means the works of the general nature described in Schedule 2 to be completed by the Council and includes any application fees, design development costs, other consultancy costs (such as expert heritage, planning, traffic or other advice), land acquisition costs, survey costs, construction costs, relating to the design, implementation, and (where relevant) dedication of the Council Works.

Dealing means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

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Dedicated Land means the land in stratum specified in Item 6 of Schedule 1 to be dedicated to the Council free of cost in accordance with this Agreement.

Defects Liability Amount means an amount equal to 10 % of the Construction Costs.

Defects Liability Guarantee means an unconditional bank guarantee, unlimited in time, issued by a bank licenced to carry on business in Australia that:

- (a) is in favour of the Council;
- (b) for the Defects Liability Amount; and
- (c) on such other terms as the Council, acting reasonably, may approve.

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

Development means the proposal of the general nature set out in Item 4 of Schedule 1 to be completed by the Developer in accordance with the Development Consent.

Development Application means the development application identified in Item 4 of Schedule 1 and includes all plans, reports, models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted by the Council to the Development Application for the Development identified in Item 4 of Schedule 1 and includes all modifications made under section 96 of the Act

Developer's Contribution means the sum of the Monetary Contribution, Dedicated Land or other Public Benefits (including, without limitation, the Developer's Works) and any combination of a Monetary Contribution, Dedicated Land or any other Public Benefits identified in this Agreement.

Developer's Works means the works identified in Schedule 3, as refined and developed in accordance with this Agreement.

Encumbered Land means the land specified in Item 7 of Schedule 1 affected by the Public Space Instrument.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

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Guarantee means an unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that:

- (a) is in favour of the Council;
- (b) for the Guarantee Amount; and
- (c) on such other terms and conditions the Council acting reasonably may approve from time to time.

Guarantee Amount means the amount specified in Item 9 of Schedule 1 as varied from time to time *in accordance with this Agreement*.

Land means the land identified in Item 3 of Schedule 1, comprising the land the subject of the Development Application.

Monetary Contribution means the amount set out in Item 5 of Schedule 1 (indexed in accordance with clause 5.2) to be paid by the Developer to the Council in accordance with this Agreement.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this agreement, and includes their successors and assigns.

Public Benefits means the public benefits identified in Item 8 of Schedule 1 which are to be provided as a result of the Developer's Works.

Public Space Instrument means an instrument creating an easement, covenant or other interest over or in respect of the Encumbered Land required under the Development Consent and upon terms that are acceptable to the Council.

Works Guarantee means an unconditional bank guarantee unlimited in time issued by a bank licensed to carry out business in Australia:

- (d) is in favour of the Council;
- (e) for the Works Guarantee Amount; and
- (f) on such other terms as the Council, acting reasonably, may approve.

Works Guarantee Amount means an amount equal to the Construction Costs

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.

Quantity Surveyor's Assessment means an assessment by an independent quantity surveyor of the Construction Costs to the reasonable satisfaction of the Council.

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4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
- (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (f) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) references to the word 'include' or 'including' are to be construed without limitation.
- (h) reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) any schedules and attachments form part of this Agreement.
- (j) a word defined in the Act has the same meaning in this Agreement.

5 PAYMENT OF MONETARY CONTRIBUTION

5.1 Payment

- (a) The Developer agrees to pay the Monetary Contribution to the Council prior to release of the first Construction Certificate issued in respect of the Development Consent;
- (b) The Monetary Contribution will be paid in cash or by unendorsed bank cheque;

5.2 Indexation

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On the date of payment, the Monetary Contribution will be adjusted to a revised amount derived by applying the following formula:

Final Monetary Contribution at Time of Payment = $C \times \frac{CPI2}{CPI1}$

CPI1

where:

C is the original amount Monetary Contribution (as identified in Item 5 of Schedule 1 of this Planning Agreement);

CPI2 is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the time of payment; and

CPI1 is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and applicable for the quarter at the date of grant of Development Consent.

5.3 Application

The Council will, in its discretion, expend the Monetary Contribution on the Council Works.

6 DEDICATED LAND

6.1 Dedication of Land

(a) The Developer must, at no cost to the Council, carry out all steps required to dedicate the Dedicated Land to the Council (including making any necessary subdivision application) if that is required under the Development Consent. If requested by the Council the Developer must provide a satisfactory Site Audit Statement.

(b) The dedication referred to in paragraph (a) must occur after Completion, but before the grant of an Occupation Certificate in respect of any part of the Development Consent.

6.2 Directions by the Council

The Developer must comply with any directions by the Council in respect of the dedication of the Dedicated Land to the Council.

7 APPROVAL OF DEVELOPER'S WORKS

7.1 Definition of Scope of Works

The parties agree that the works described in Schedule 3 comprise the Developer's Works for the purposes of this Agreement. The parties acknowledge and agree that further design detail and refinement are/may be necessary, having regard to the following:

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- (a) the extent to which the design of any part of the Developer's Works has 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 Agreement;
- (b) conditions reasonably affecting the Developer's Works which were not reasonably capable of identification on or before the date of this Agreement;
- (c) the extent of any design refinement identified in Schedule 4;
- (d) to take into account a modification to the Development Consent made and approved under s.96 of the Act or any other development consent granted in respect of the Developer's Works; and
- (e) to accommodate the policies, procedures and standards identified in Schedules 2 or 4 in accordance with the reasonable requirements of the Council.

7.2 Developer to Prepare and Submit

The Developer must promptly (and in any event within 6 months of the date of this Agreement, or such later time as the parties may agree) prepare the a detailed description, including, design drawings, for the Developer's Works in accordance with the requirements set out in Schedule 5, and submit it to Council's Representative for approval, such approval not to be unreasonably withheld.

7.3 Notice of Plans

The Council will promptly (and in any event within 40 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 is satisfactory. If the design or description is not satisfactory, then Council will identify the further information, or modifications, (as the case may be) which are required. The Developer must promptly amend the proposed design to take into account the comments made by the Council under this clause.

7.4 Developer Does Not Prepare

If the Developer:

- (a) does not prepare plans in accordance with clause 7.2; or
- (b) 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

then the Council may make an appropriation from the Guarantee for the purposes of carrying out works of the kind contemplated by this Agreement and generally identified in Schedule 3.

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7.5 Valuation of Proposed Developer's Works

The Developer must prior to or during the course of preparation of the design plans prepare and submit a detailed costs estimate (certified by a Quantity Surveyor for the estimated costs of the Developer's Works. The Council (acting reasonably) may:

- (a) reject items included within that Quantity Surveyor's Assessment which are not directly related to the Developer's Works;
- (b) require substantiation for the costs of items where the amount estimated is considered by Council to be excessive in the circumstances;
- (c) require an adjustment to the costs estimates to reflect a variation to the design required under this clause 7.

The parties expressly acknowledge and agree that the value of the works set out in Schedule 3 may be adjusted having regard to the process of valuation set out in this clause. The Developer is not entitled to change or reduce the scope of the Developer's Work by reason only that the costs incurred are greater than estimated under this clause or greater than the amount identified in schedule 3.

8 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 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 the documents or standards (as the case may be) set out in Schedule 4.

8.3 Directions by the Council

The Developer must comply with any direction given by the Council under the preceding sub-clause in respect of the design and implementation of the Developer's Works.

9 CONSTRUCTION OF DEVELOPER'S WORKS

9.1 Insurance

The Developer must:

- (a) maintain public liability insurance, with an insurer approved by the Council, noting the Council as principal with a cross liability clause, for an amount not less than the amount stated in Item 10 of Schedule 1 covering all aspects and staging of the

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Developer's Works and submit a copy of the certificate of insurance to the Council prior to the commencement of the construction of the Developer's Works and when otherwise required by the Council;

- (b) maintain all other necessary insurance policies in respect of the Developer's Works including, but not limited to, insurance of the Developer's Works and insurance against death or injury to persons employed in relation to the undertaking of the Developer's Works, and 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 government agency, including any necessary road opening permit.
 - a) Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents for the Developer's Works.

9.3 Construction Work

The Developer must (at its cost):

- (a) carry out and complete the Developer's Works in accordance with the all approvals and consents relating to the Developer's Works (including the approval by Council of plans and any other information submitted under this Agreement); and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner in accordance with the plans approved under this Agreement 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 directions from the Council in respect of the construction of the Developer's Works.

The Developer expressly acknowledges and agrees that the estimated costs of the work and work value set out in Schedule 3 are estimates only. The Developer is not entitled to reduce the Developer's Works by reason only that the costs actually incurred are greater than those anticipated and set out in Schedule 3.

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9.4 Inspection of Works

The Council as a party to this Deed and not as an authority may (but is not obliged) at reasonable times and on reasonable notice inspect the Developer's Works during the course of construction. The Council will promptly in good faith inform the Developer's representative, in writing, 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 Works Completion

When, in the opinion of the Developer, the Developer's Works have reached completion, the Developer must notify the Council's Representative 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 warranties, guarantees, maintenance information or other material reasonably required for the ongoing nature of the 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's representative must inspect the Developer's Works within 14 days and must by written notice to the Developer:

- (a) concur that Completion has been achieved; or
- (b) disagree that Completion has been achieved and (if the Council's representative so disagrees) 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 reach Completion on or before the date on which an Occupation Certificate

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is issued in respect of any part of the buildings the subject of the Development Consent.

9.8 Non-Completion of Developer's Works

- (a) 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 Agreement.
- (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 Works Guarantee in such amount as the Council considers to be reasonably necessary. The Developer will make no objection to any such appropriation by the Council.
- (c) If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under the Development Consent or this Agreement, 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 Agreement or the 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 Works Guarantee and (to the extent that expenditure exceeds the amount secured) recover any shortfall from the Developer as a debt due and owing.

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 it, including the Contractor) in connection with the performance of the Developer's Works.

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's Representative, within a reasonable period (having regard to the nature of the defect).

10.2 Security for Defects Liability Period

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In exchange for the Council returning the Works Guarantee on Completion, the Developer must provide the Council the Defects Liability Guarantee as security for performance by the Developer of its obligations under this clause 10.10.3 **Application of Security**

If the Developer does not rectify any defect in the Developer's Works duly notified under clause 10.1, then the Council may

- (a) rectify the defect in the Developer's Works, including any omission;
- (b) may make an appropriation from the Guarantee for the costs of and arising from the rectification; and
- (c) (to the extent that the costs exceed the Guarantee held) may recover the costs from the Developer as a debt due and owing.

11 SECURITY

11.1 Provision of Security

The Developer must provide

- (a) the Guarantee to the Council on execution of the Agreement; and
- (b) the Works Guarantee to the prior to the issue of the first Construction Certificate for the Development as security for the Developers obligations in relation to the Developers Works.

11.2 Release of the Works Guarantee

- (a) The Developer may by notice to the Council, upon completion of any distinct stage of the construction of the Developer's Works, request a partial release of the Works Guarantee. Any such request must be in writing.
- (b) The Council may by notice to the Developer request that the Developer provide a Quantity Surveyor Assessment of the Developer's Works, and the Construction Cost, before considering any request made by the Developer under paragraph (a).
- (c) The Council must by notice to the Developer consent to a partial release of the Guarantee upon receiving a request pursuant to paragraph (a) and receiving a Quantity Surveyor Assessment (if requested) pursuant to paragraph (b) provided the Quantity Surveyor Assessment is equal to or greater than the partial release requested.

11.2A Release of the Guarantee

The Council must return the Guarantee to the Developer

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- (a) in exchange for payment of the Monetary Contribution pursuant to clause 5.1(a); or
- (b) if the Council accepts a surrender of the Development Consent in its entirety or
- (c) if the Development Consent lapses

11.3 Rights and Remedies of the Council

- (a) The Developer expressly acknowledges and agrees that the Council may make an appropriation from the Works Guarantee in such amount as the Council thinks fit if:
 - (i) the Developer's Works are not resolved within 12 months of the date of issue of the Construction Certificate in respect of the development authorised by the Consent;
 - (ii) the Developer does not submit the construction design for the Developer's Works to Council's Representative within **6 months** of the date on which the Development Application is determined;
 - (iii) the Developer's Works do not reach Completion within **24 months** of the date of this Agreement; or
 - (iv) the Council in exercising its powers under this Agreement incurs expense or liability.
- (b) The amount appropriated by the Council under paragraph (a) must be applied towards:
 - (i) the costs and expenses incurred by the Council rectifying any default by the Developer under this Agreement;
 - (ii) carrying out the Developer's Works; or
 - (ii) carrying out any other works to achieve the Public Benefits as the Council considers appropriate.

11.4 Right to Claim Not Affected

The Developer acknowledges and agrees that:

- (a) the Council may claim, under the Works Guarantee or the Guarantee without reference to the Developer; and
- b) the rights of the Council under this Agreement do not derogate from any other rights at law or in equity in relation to any default by the Developer.

11.5 Adjustment of Guarantee Amount

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- (a) On each anniversary of the date of this Agreement ("adjustment date") the Guarantee Amount is adjusted to a revised amount derived by applying the following formula:

$$RGA = \frac{GA \times A}{B}$$

where:

- RGA** is the Revised Guarantee Amount applicable from the relevant adjustment date;
- GA** is the Guarantee Amount that is current on the relevant adjustment date;
- A** is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and published immediately before the relevant adjustment date;
- B** is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and published immediately before the later of the date of this Agreement (in the case of the first adjustment of the guarantee) and, (in the case of subsequent adjustments), the immediately preceding adjustment date.

- (b) The Council may give the Developer written notice of the revised Guarantee Amount to apply from the relevant adjustment date. If the Council does not do so, then the existing Guarantee will be retained.
- (c) The Developer must give the Council a replacement or further Guarantee so that the Council holds Guarantees for an amount equal to the revised guarantee amount no later than 14 days after receipt of a notice given under paragraph (b).

11.6 Release of Undertaking

If upon the expiration of the Defects Liability Period:

- (a) the whole of the monies secured by the Defects Liability Guarantee have not been expended, and the monies accounted for in accordance with clause 11.2 and 11.3; and
- (b) the Council's Representative (acting reasonably) is satisfied that there are no actual or contingent liabilities of the Council arising as a result of the performance of any Developer's Works,

then the Council will promptly return the Defects Liability Guarantee, or the remainder of the monies secured under the Defects Liability Guarantee (as the case may be), to the Developer or as the Developer directs.

12 EXPENDITURE BY THE COUNCIL

12.1 Expenditure by the Council

If the Council carries out the Developer's Works under sub-clause 11.3, 9.8 or 7.4, then the Council:

- (a) is not required to expend more money than is secured by the Works 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 Works Guarantee at that time; or
- (b) may expend more money than is secured by the Works Guarantee in order to deliver the Developer's Works.

12.2 Debt Due and Owing to the Council

If Council expends more money than is secured by the Works Guarantee in either carrying out, or in rectifying the Developer's Works, (whether that expenditure is incurred under sub-clause 12.1; 10.3 or any other provision of this Agreement), then the amount in excess of the Works Guarantee will be deemed to be a debt immediately due and owing to the Council by the Developer.

13 REGISTRATION OF THIS AGREEMENT

13.1 Registration of Agreement

- (a) The Developer warrants that it has obtained all consents to the registration of this Agreement on the Certificate of Title to the Land as are necessary and in particular the consent of any Mortgagee or lessee registered on the Certificate of Title to the Land;
- (b) The Developer must have any Mortgagees and lessees execute the Request to register this Agreement at Land and Property Information and provide to the Council with three copies of this Agreement executed by the Developer and any Mortgagees or lessees for execution by the Council. In addition the Developer must provide a copy of the production ticket as evidence that the Mortgagee has produced the Certificate of Title at Land and Property Information for the purpose of registration of the Agreement. If the Land is unencumbered by a Mortgage so that the Developer has custody of the Certificate of Title, the Developer must produce the Certificate of Title to Land and Property Information and give a copy of the production ticket to the Council.
- (c) The Developer must promptly comply with any requisitions that may be raised with regard to registration of the Agreement from

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Land and Property Information and pay for the registration fees for the Agreement.

- (d) The Council will notify the Developer after registration of the Agreement by the Council at Land and Property Information and forward the Developer's copy of the Agreement to it.
- (e) If clause 11.2A(b) or Clause 30 applies, Council must remove this Agreement from the Certificate of Title to the Land.

13.2 The Developer acknowledges and agrees that:

When this Agreement is executed by the owner of the Land the Council is deemed to have acquired and the owner is deemed to have granted an equitable estate and interest in the Land for the purposes of section 74F(1) of the Real Property Act 1900 and consequently the Council has a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest.

It will not object to the Council lodging a caveat on the relevant folio of the register for the Land nor will it seek to remove any caveat lodged by the Council.

13.3 **Removal of Agreement and Caveat**

After the whole of the Developer's Contribution has been completed or supplied (as the case may be), the Council will execute any form and supply such other information as reasonably required by the Developer to enable the removal of the Agreement and the caveat from the title to the Land.

14 DISPUTE RESOLUTION

14.1 **Reference to Dispute**

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve in accordance with this clause 14.

14.2 **Notice of Dispute**

The party wishing to commence dispute resolution processes must notify the other in writing of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve latter than by way of this clause 14;
- (b) the intent to involve this clause 14;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;

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- (d) any material impact which the dispute has upon the completion of the Developer's Works (and in particular the completion of the remainder of the Development).

The contents of a notice issued under the clause 14.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

14.3 **Principals of Parties to Meet**

The principals of the parties (and in the case of the Council, the principal may include the person acting the role of General Manager as defined in the Local Government Act, or such person as is nominated by that officer in writing) must promptly (and in any event within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for the resolution of the relevant dispute.

14.4 **Neither Party May Constrain**

If:

- (a) at least one meeting has been held in accordance with clause 14.3; and
- (b) the parties have been unable to reach an outcome identified in 14.2(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 14.3;

then that party may, by 14 day's notice in writing to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 14 does not of itself amount to a breach of the Agreement.

15 NOTICES

15.1 Service of Notice

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out in Item 11 of Schedule 1; or
- (b) faxed to that Party at its fax number set out in Item 11 of Schedule 1.

15.2 Change of Address

If a Party gives the other Party 10 business days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

1.3 Time of Service of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time

- a) if it is delivered, when it is left at the relevant address
- b) if it is sent by post, 2 business days after it is posted
- c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

15.4 Service After Hours, on Weekends and Holidays

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

16 APPROVALS AND CONSENT

Except as otherwise set out in this Agreement, a party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

17 ASSIGNMENT AND DEALINGS

17.1 Dealings with Land

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(a) Subject to clause 17.1(b), the Developer must not have any Dealings with the Land unless the Developer first informs the proposed assignee, purchaser or other party (the "**Incoming Party**") of this Agreement and provides the Incoming Party with a copy of this Agreement and transfers the obligations of this Agreement to that party.

(b) If the Incoming Party is acquiring an interest in the Land as a purchaser of one or more lots in a strata scheme, (whether or not the plan has, at the date of exchange, been registered at the Land and Property Management Authority), then the Developer may create that interest without requiring that party to enter into an Agreement with the Council and the interest so created will not be in breach of this Agreement.

17.2 **Substitution of Security**

As soon as is practicable after the Developer has any Dealings with the Land and the Incoming Party executes an Agreement in similar form to this Agreement and provides a Guarantee and/or Works Guarantee in terms acceptable to the Council, the Council will, if so directed by the Developer, release the Guarantee held and/or Works Guarantee at that time.

17.3 **Claim if No Substitution**

If the Developer omits to comply with its obligations under clause 17.1, then the Council may make an appropriation from the Guarantee in such amount as the Council thinks fit.

18 **COSTS**

18.1 **Legal and Administrative Costs**

The Developer must pay all reasonable legal and administrative costs and expenses in relation to:

- (a) the negotiation, preparation and execution of this Agreement;
- (b) the giving effect to this Agreement; and
- (c) any enforcement of the rights under this Agreement.

18.2 **Stamp Duty**

The Developer is liable for and must pay all stamp duty (including any fine or penalty) on or relating to this Agreement.

19 **ENTIRE AGREEMENT**

This Agreement sets out the whole agreement of the Parties in respect of the subject matter. There are no other agreements, warranties or undertakings.

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20 FURTHER ACTS

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

21 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

22 JOINT AND SEVERAL LIABILITY

Any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually.

23 NO FETTER

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

24 REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power:

- (a) to enter into this Agreement
- (b) comply with their obligations under the Agreement.

25 SEVERABILITY

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

26 MODIFICATION

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

27 WAIVER

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A waiver by either Party is only effective if it is given in writing, and will only relate to the particular obligation or breach (as the case may be) identified in that communication.

28 GST

- 28.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the "GST Act").
- 28.2 If a party to this Agreement (the "Supplier") makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- 28.3 If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing ("reimbursable expense") suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- 28.4 If a party to this Agreement has the benefit of an indemnity for a cost, expense, loss or outgoing ("indemnified cost") under this Agreement, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- 28.5 Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- 28.6 Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

29 ENFORCEMENT OF AGREEMENT

29.1

- (a) Subject to clause 29.1(b) if the Developer does not comply with clauses 6 by agreement between the parties, and without limiting any other remedies available to it, Council may compulsorily acquire dedication of the Dedicated Land in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (Just Terms Act]) for the amount of \$1.00.
- (b) Council must before exercising the right conferred in clause 29.1(a) give written notice to the Developer to rectify the non-

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compliance with clauses 6.1 and 6.2 within 40 Business days of receipt of the written notice.

- (c) The Developer and the Council agree that this clause 29.1 is an Agreement between Council and the Developer for the purpose of section 30 of the Just Terms Act, and
- (d) In this clause 29.1 Council and the Developer have agreed on all relevant matters concerning the compulsory acquisition and compensation to be paid for the acquisition of the easement and dedication for the purposes set out in clauses 6.1 and 6.2

30. LEGAL CHALLENGE

If the Development Consent is declared invalid as the result of a legal challenge and all rights of appeal have been exhausted such that the Development cannot be carried out in accordance with the Development Consent, the Council agrees to reimburse the Developer any Monetary contributions paid under this Deed and the Parties will meet to discuss the return of the Guarantees and any matters that may need to be addressed as a result of the commencement of any works associated with the delivery of the Developer's Contribution.

SCHEDULE 1 REFERENCE SCHEDULE

Item	Name	Description
1	Developer's Name Developer's ACN Developer's Address	WATERLOO LANDHOLDING PTY LTD (ACN 155 177 727) Registered Office: 135-153 New South Head Road Edgecliff N.S.W. 2027
2	Council's Representative	Brett Calcar
3	Land	Lot 1 in DP79752 known as 810 Elizabeth Street Waterloo
4	Development Application No	D/2013/700 for demolition of existing structures, retention and reconfiguration of existing basement car park, construction of 4 residential apartment buildings ranging in height from 4 to 7 storeys, containing 161 residential apartments, 1 retail/commercial tenancy and 122 car parking spaces, with associated tree removal, landscaping and public domain improvement works and with strata and stratum subdivision.
5	Monetary Contribution	a)\$279,000.00 towards the Green Square Town Centre Works described in part (A) of Schedule 2

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		<p>b) \$900,000 towards the cost of carrying out the CITO Stormwater Harvesting Project in Waterloo Oval described in part (B) of Schedule 2</p> <p>c) \$63,450 towards the cost of carrying out the Drainage Renewal Program described in part (C) of Schedule 2</p>
6	Dedicated Land	An area of approximately 264 m ² fronting Elizabeth Street as shown marked on the plan comprising Annexure "A" to be dedicated in stratum and limited in depth to the top of the waterproof membrane over the roof of the lower basement level car park
7	Encumbered Land	None
8	Public Benefits	The provision of a wider footpath in Elizabeth street together with a monetary contribution towards (a) public infrastructure works in Green Square, (b) Stormwater Harvesting at Waterloo Oval and (c) Drainage Renewal works in the Waterloo area
9	Guarantee Amount	\$1,272,450.00
10	Public Liability Insurance	20 million
11	<p>Notices</p> <p>Council Attention Address Fax Number</p> <p>Developer Attention Address Phone Number</p>	<p>The Director City Planning Development and Transport 456 Kent Street Sydney 2000 9265 9505</p> <p>Ashley Alexander Murdoch</p> <p>(03) 9429 6099</p>

<p>SCHEDULE 2 COUNCIL'S WORKS</p>

A) Green Square Town Centre \$279,000.00

The payment of the monetary contribution will be applied for the purposes of the provision of infrastructure in or about the area known as "Green Square Town Centre". The infrastructure may include costs of, or associated with, any one or more of the following:

- a. Design construction and dedication of new roads (including footpaths, pavements, carriageway, street lighting, signage, and street trees and furniture):

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- b. Modification and enhancement of existing roads, including resurfacing, replacement of plantings and the like;
- c. Design, construction and maintenance of stormwater management systems, including channelling and detention measures;
- d. Design, construction and installation of public open space, including parks, verges, and plazas;
- e. Design, commissioning, construction and installation of public art in any publicly accessible open space;
- f. Provision of any other facilities reasonably intended or likely to enhance the public amenity of the Green Square Town Centre for the community, including (without limitation) transport facilities, libraries, community rooms or halls, child care facilities, and general recreational facilities.

**B) CITO Stormwater Harvesting Project Waterloo Oval (C19010)
\$900,000.00**

- (a) Installation of a new 150KL underground storage tank and 100KL irrigation tank (250KL combined storage capacity).
- (b) Installation of a stormwater diversion pit, gross pollutant trap and pump well under Pitt Street;
- (c) Supply and install new filtration equipment, pumps and associated services;
- (d) Installation of a new automated irrigation system; and
- (e) Reinstatement works to the road, pavement, fencing, turf and oval.

C) Drainage Renewal Program(C24003) \$63,450.00

- (a) Renewal and upgrade of stormwater drainage systems
- (b) Construction of new stormwater pollution control devices
- (c) Catchment analysis and investigation and design

**SCHEDULE 3
DEVELOPER'S WORKS**

SECTION 1 Description of Works

The provision of a footway and vehicular splay along the Elizabeth Street frontage of the Development on the Dedicated Land

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SECTION 2

\$30,000.00

SECTION 3

Relevant Plans [TBA]

Author:

Drawing Reference No:

Issue:

Section 4 – Design Refinement

Note: The purpose of "Design refinement" is to identify details which are manifestly incomplete, or which are simply unacceptable, on the drawings current at the time of drafting. This may be a very generic statement ("preliminary drawings only and materials, finishes, layout, remain to be completed...") If design refinement is needed, then use either this section ("X material or equivalent") or Schedule 4 to identify reference points for minimum standards or requirements.

SCHEDULE 4 STANDARDS

General

The standards referred to in this Schedule 4 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.

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.

Relevant Australian Standards – Verge Works, Through site links

- AS 1725 Geotechnical Site investigation
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 1743 Road signs

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- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 4282 Design for Access and Mobility
- AS 4454 Composts, soil conditioners and mulches

Relevant Australian Standards – Roads (including pedestrian areas)

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 4282 Design for Access and Mobility
- AS 1742 Manual of uniform traffic control devices
- AS 1743 Road Signs

1. Council Standards (All Works)

City of Sydney Contaminated Lands DCP 2004

Interim draft Sydney Street Design Code

Interim draft Sydney Lights Design Code

City of Sydney Access Policy

On Site Stormwater and Road Works (Zetland/Alexandria)

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- Stormwater Drainage Strategy for mid block (prepared by Webb McKeown consulting engineers)
- South Sydney City Council Development Specification for Civil Works
- AS/NZS 3500.3 stormwater drainage and Local Government Regulations 2003.
- Sydney Streets Technical Specifications
- City of Sydney Development Specifications for Civil Works
- Plumbing and Drainage code of Practice-Local Government Regulations 2005.

<p style="text-align: center;">SCHEDULE 5 SUBMISSION REQUIREMENTS: - see CLAUSE 7.2</p>

Introduction

The following list of drawings forms an indicative minimum level of documentation required for annexure to a Planning Agreement containing public domain works. It is intended to be a generic list that is tailored to individual projects as required.

Notes:

1. For staged developments, additional General Arrangement drawings are to be provided describing the breakdown of items in points 1, 2 and 3 for each stage.
2. Where relevant, drawings must refer to Council endorsed reports, policies etc that inform the design.
3. Where relevant, drawings must include related works not subject to the Agreement for coordination purposes. These works should be clearly differentiated.
4. All documents should include a note to the effect that final details are subject to further development and documentation through application to specific locations, including further approvals by Council and statutory Authorities prior to construction, or similar.
5. Indicative details required can be derived where applicable from existing City policies, specifications and standards.

GENERAL ARRANGEMENT DRAWINGS (MIN SCALE 1:500)

1. Site conditions and dedications drawing

- Include survey information of existing and proposed boundaries, setbacks, and interfaces with future stages of the development where relevant.
- Include information of existing and proposed kerb/gutter and road reservation

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- Include areas subject to dedication, existing encumbrances, easements and the like, including critical dimensions and areas.

2. **Scope Drawing**

A drawing showing the extent and location of public domain works, including any:

- Parks, including any community detention
- Through site links
- New road reservations, road closures, reconstruction of existing roads and footpaths
- Provision of public utility services (new service requirements)
- New footway, kerb and gutter construction including road restoration
- Traffic management works including all statutory line marking and signage
- Footway elements including street trees, lighting, street furniture and the like

3. **Stormwater drainage design**

The design and documentation of the minor and major drainage systems, showing:

- A catchment area plan showing contours and grading
- General layout of the drainage system with pit locations
- Community detention, overland flow paths etc
- Catchment limits and any other information necessary for the design and construction of the drainage system
- Coordination with other public domain works and public utility services.

Note that not all of the stormwater issues relating to developments will be subject to a Planning Agreement, but the overall concept must be illustrated, highlighting those items which do come under the Planning Agreement.

INDICATIVE DETAILS/SPECIFICATIONS AND SCHEDULES

1. **Roads**

Key drawing (1:200) showing:

- nomination of road loading, carriageway widths, public utility etc
- layout of typical parking bays

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- traffic management and intersection layout
- pavement structure(material types and layer thickness),batter slopes
- junctions with existing road, and indication of future stages
- Indicative construction details 1:20 minimum scale, including:
 - typical section through each road type.
 - abutment with existing road carriageway.

2. Footways

Key drawing (1:200) showing:

- materials for pavement, kerb and gutter etc
- extent of undergrounding of power
- public utility requirements
- new/existing trees and other streetscape elements

Indicative construction details, including:

- typical sections (1:20)
- paving patterns/junctions where relevant (1:50),
- tree pits (1:50)
- kerb and gutter, stormwater inlets/gullies (1:20)
- pram ramps and driveway crossings (1:50)
- Schedule and/or indicative details covering specifications and numbers/layouts for all streetscape elements (1:50) including
 - street furniture (bollards, seating, etc)
 - lighting, service pits, signage

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EXECUTED as an Agreement.

COUNCIL OF THE CITY OF SYDNEY by)
its duly appointed attorney **MARCIA**)
CLAIRE DOHENY Power of Attorney)
registered book 4572 No. 994 in the)
presence of:)

Witness:

Name (printed):

Marcia Claire Doheny

WATERLOO LANDHOLDING PTY LTD)
(ACN 155 177 727) in accordance)
with section 127 of Corporations Law:)
)
)

Signature:

Name:

Position:

Signature:

Name:

Position: