



Project Delivery Deed Coffs Harbour Social Housing Project

Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales
Landowner

MAH Harbour Drive Limited
Developer

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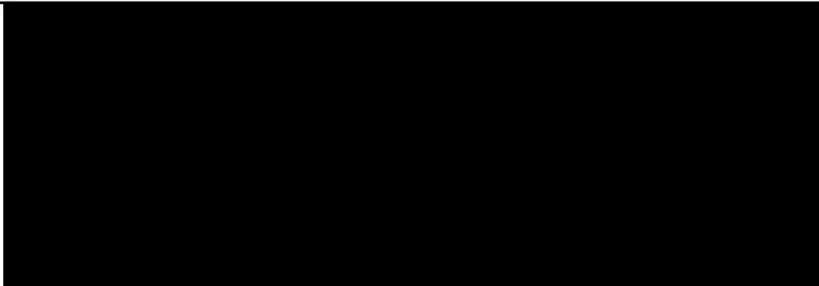
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Project Delivery Deed - Reference Schedule

Item	Subject	Detail
1	Date	/...../2025 5/11/2025
2	Landowner	Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales ABN 36 433 875 185 of 6 Parramatta Square, 10 Darcy St Parramatta NSW 2150
3	Developer	MAH Harbour Drive Limited ABN 69 668 668 586 of Level 7, 580 George Street Sydney NSW 2000
4	Property (clause 1.1)	Address: 211A – 215 Harbour Drive, Coffs Harbour NSW 2450 Being the land in Folio Identifiers 14/516300, 15/11/504105 and 100/DP1041655.
5	Name of Project	Coffs Harbour Social Housing Project
6	Preliminary Period Conditions (clause 1.1 and clause 3 and Attachment 1)	The Project is subject to the Preliminary Period Conditions being achieved or waived by the applicable Preliminary Period Conditions Deadline. See clause 3 for the process of satisfying or waiving the Preliminary Period Conditions. Attachment 1 sets out the Preliminary Period Conditions: - Part 1 of Attachment 1 sets out the Preliminary Period Conditions for which the Developer is responsible. - Part 2 of Attachment 1 sets out the Preliminary Period Conditions for which the Landowner is responsible. Under clause 3, the parties must use reasonable endeavours to satisfy the Preliminary Period Conditions for which they are responsible as soon as reasonably practicable but by no later than the applicable Preliminary Period Conditions Deadline, as per the tables in Attachment 1. If at the end of the Preliminary Period, a Preliminary Period Termination Trigger has arisen and is outstanding, this deed may be terminated in accordance with clause 3.9 and Part 3 of Attachment 1. If at the end of the Preliminary Period no Preliminary Period Termination Trigger has arisen, all risk and responsibility in respect of the Project passes to the Developer subject to the terms of this deed.
7	Final Preliminary Period Conditions Deadline	The Final Preliminary Period Conditions Deadline is [REDACTED] subject to extensions in accordance with clause 3.6.
8	Development Consent Status (clause 3 and clause 6)	The Landowner is responsible for obtaining the Agreed Development Consent as one of the Landowner Preliminary Period Conditions. See clauses 3 and 6.

Item	Subject	Detail
9	Design Documentation, Applications and Approvals <i>(clauses 7 to 10)</i>	The Landowner is responsible for the Concept Design Documents. The Developer is responsible for: - the development of the Design Documentation and for obtaining the Landowner's consent to the Design Documentation in accordance with clause 7; - preparing and obtaining the Landowner's consent to Applications for Approvals (other than the Agreed Development Consent) in accordance with clauses 8 and 9; - lodging and progressing Applications for Approvals (other than the Agreed Development Consent) and obtaining Landowner's consent to those Approvals in accordance with clause 10.
10	Engagement of Builder <i>(clause 3 and clause 12)</i>	The Developer is responsible for conducting a tender for a builder and obtaining the Landowner's approval to the Builder and the terms of the Building Contract for the Project as one of the Developer Preliminary Period Conditions. See clauses 3 and 12.
11	Financing <i>(clause 3 and clause 13)</i>	The Landowner has entered into the HAFFF Funding Agreement and the HAFFF Project Agreement with Housing Australia under the HAFFF Funding Round Two for funding for the Project. The Landowner agrees to novate the HAFFF Project Agreement to the Developer in accordance with clause 13. The novation of the HAFFF Project Agreement is a Landowner Preliminary Period Condition. The Developer is responsible for obtaining finance for the Project as one of the Developer Preliminary Period Conditions. See clauses 3 and 13. In particular, the Developer must obtain the Landowner's consent to the Financier and the terms of the financing in accordance with clause 13.
12	Landowner Capital Advance <i>(clause 1.1 and clauses 14 and 15)</i>	The Landowner has agreed to provide the Landowner Capital Advance to the Developer to pay Development Costs in accordance with clause 14.2. The Landowner Capital Advance is [REDACTED]. Subject to clause 3.5, the Developer cannot make a progress drawdown claim in respect of the Development Costs (and the Landowner is not required to pay any amount in respect of such a claim) unless and until all of the Preliminary Period Conditions have been satisfied or waived in accordance with this deed. Progress drawdown claims may be made by the Developer in accordance with clause 14.
13	Vacant Possession	The parties acknowledge that as at the date of this deed, the Landowner has obtained Vacant Possession of the Property.
14	Access <i>(clause 30)</i>	The Landowner will grant the Developer access to the Property in accordance with clause 30.
15	Intended dwelling mix	The parties intend that the Development will yield no less than 60 Social Housing Dwellings (being no less than 34 Landowner Social Housing Dwellings and no less than 26 Developer Social Housing Dwellings) with the following mix of sizes and average unit size: [REDACTED]

Item	Subject	Detail
		 The Developer will undertake the Development to deliver the yield and dwelling mix as stated above, unless the yield and/or dwelling mix is adjusted by written agreement in accordance with clause 6.3(c)(iv), in which case the Developer will undertake the Development to deliver the yield and dwelling mix as adjusted.
16	Minimum Requirements for Social Housing Dwellings <i>(clause 4.1)</i>	The Developer must construct and deliver all Social Housing Dwellings under this deed to meet at a minimum the LHA Gold Level.
17	Milestone Dates <i>(clause 1.1 and clause 23 and Attachment 2)</i>	Once the Preliminary Period Conditions have been satisfied or waived, the Developer must achieve each Milestone by the relevant Milestone Date (clause 23.1). The Milestone Dates are set out in Attachment 2. Clauses 23.2 to 23.9 (inclusive) set out the circumstances in which the Developer may be entitled to an extension of time to the Milestone Dates.
18	Sunset Date	The Sunset Date is 
19	Transfer of Developer Social Housing Dwellings <i>(clause 27)</i>	After the satisfaction or waiver of the Preliminary Period Conditions and on or before the Date of Practical Completion, the Developer and the Landowner must enter into the Contract for the sale of the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities to the Developer in accordance with clause 27. Following the Date of Practical Completion, the Landowner agrees to transfer the Developer Social Housing Dwellings to the Developer in accordance with the Contract.
20	Trigger Events <i>(clause 28)</i>	If a Trigger Event occurs, the Landowner may give the Developer a notice specifying the Trigger Event and stating that the Developer must remedy that Trigger Event. The Trigger Events are defined in clause 1.1. If the Landowner gives a Trigger Notice, the Developer has an opportunity to remedy the Trigger Event. If the Trigger Event is not remedied in accordance with clause 28 this will be an Event of Default and the Landowner will be entitled to terminate this deed in accordance with clause 28.3.
21	Independent Certifier <i>(clause 1.1 and 2.4)</i>	An independent certifier will be jointly appointed by the Developer and the Landowner under clause 2.4 to carry out the obligations of the Independent Certifier under this deed, including: - determining if the Developer is or is likely to be delayed in achieving a Milestone by the Milestone Date in accordance with clause 23.5; - determining that the Demolition Works have been completed in accordance with clause 3.5;

Item	Subject	Detail
		• determining that the Developer has achieved Substantial Commencement of the Works in accordance with clause 16.2; • inspecting the Works, determining that Practical Completion has taken place and issuing of a Certificate of Practical Completion confirming the same under clause 25.2; and • receiving notices with regard to the identification of Defects during the Defects Period under clause 26.1. For avoidance of doubt, the same Independent Certifier appointed under the HAFFF Project Agreement will also be appointed under this deed and the Developer may elect to appoint the Independent Certifier to discharge the duties of the principal certifying authority for the Project.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this deed:

Access Period means the period of any licence granted pursuant to clause 30.

Affordable Housing means affordable housing as defined by the State Environmental Planning Policy (Housing) 2021 and in the EP&A Act read together (each as amended from time to time).

Agreed Development Consent means a Development Consent which does not give rise to any Unacceptable Conditions or which is otherwise agreed by the parties to be an Agreed Development Consent for the purpose of this deed.

Application means an application for any Approval other than the Agreed Development Consent (and includes an application by or on behalf of the Developer to modify the Agreed Development Consent).

Approvals means any approvals, consents, grants, certificates, Modifications, Construction Certificates, Compliance Certificates, Occupation Certificates, Complying Development Certificates, permits, licences, conditions or requirements and any variations of them which may be required by Law for the commencement and carrying out of the Works, the strata subdivision of property or which may be imposed on the Development by any Authority and includes the Agreed Development Consent.

Approved Purposes means:

- (a) in respect of the Initial Investigations and Early Works Licence: the Initial Investigations and Works Purpose and the performance of the Early Works in accordance with this deed; or
- (b) in respect of the Construction Works Licence: the performance of the Works in accordance with this deed.

Associate means officers, employees, consultants, contractors, advisers and agents.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Builder means a builder under a Building Contract and having a licence under the *Home Building Act 1989 (NSW)* to carry out the Works under the relevant Building Contract.

Building Contract means a head contract between the Developer and a Builder in connection with the design and construction (or construction only) of all or substantially all of the Works and complying with the *Home Building Act 1989 (NSW)*.

Building Contract Notice means a notice issued by the Developer to the Landowner which is in compliance with clause 12.2(b).

Building Contract Price means the lump sum price in respect of the Works set out in the Building Contract Notice given by the Developer to the Landowner.

Builder's Side Deed means the deed to be entered into in respect of the Works by the Developer, the Landowner and the relevant Builder generally in the form of Attachment 12 and otherwise in a form acceptable to the Landowner, the Developer and the Builder (acting reasonably).

Business Day means a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally in Sydney.

Certificate of Practical Completion means a certificate issued by the Independent Certifier, pursuant to which certificate the Independent Certifier:

- (a) certifies to the Landowner and the Developer that Practical Completion has been achieved in respect of the Works; and
- (b) lists any minor defects and omissions in the Works which are identified during the inspection referred to in clause 25.2 but which do not prevent the Works from achieving Practical Completion.

Certified Estimates means the Certified Estimated Remediation Costs and the Certified Estimated Site Condition Costs.

Certified Estimated Remediation Costs means the estimated Costs to remediate or otherwise lawfully address the Contamination of the Property as identified as existing or reasonably likely to exist at the Property a result of the Site Investigations – Contamination (such Costs and Contamination as certified by an Expert in accordance with the requirements of the Developer Preliminary Period Conditions).

Certified Estimated Site Condition Costs means the estimated Costs to rectify or otherwise overcome any Unexpected Adverse Impacts affecting the Property as identified as existing or reasonably likely to exist at the Property by the Site Investigations – Other (such Costs and Unexpected Adverse Impacts as certified by an Expert in accordance with the requirements of the Developer Preliminary Period Conditions).

CHP Act means the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) and includes the Community Housing Providers National Law as adopted by that Act.

CHP Law means:

- (a) the CHP Act and any related regulations; and
- (b) any other law or regulations:
 - (i) declared to be community housing legislation by the law of New South Wales; or
 - (ii) to which a Housing Provider who is a community housing provider or the assets or operations of a Housing Provider who is a community housing provider become subject.

CHP Management Agreement means the Landowner's form of agreement for lease and lease which are entered into by the Landowner and the Developer on the date of this deed.

Claim includes any right, debt, cause of action, action, liability or obligation (whether actual, contingent or prospective), claim, entitlement, damages, proceeding, remedy, suit, demand, Costs or Loss of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent and whether at Law (including in tort, for negligence or otherwise), in equity, under statute or contract or otherwise.

Compliance Certificate has the meaning given in section 6.4(e) of the EP&A Act.

Complying Development Certificate means a complying development certificate referred to in section 4.27 of the EP&A Act.

Concept Design Documents means the list of preliminary design documents for the Works provided by the Landowner to the Developer comprising Attachment 4, as varied in accordance with this deed.

Consent Authority means, in relation to an Application or an application for Development Consent, the Authority having the function to determine that Application or application.

Construction Certificate means a certificate referred to in section 6.4(a) of the EP&A Act.

Construction Works Licence means the licence for the Works on the terms and conditions set out in Attachment 11.

Contamination means that land or water is affected by:

- (a) a substance, gas, liquid, chemical, mineral or other physical or biological matter that is at a concentration which is above the concentration normally present in that land or water in the vicinity and presents a risk of harm to human health or the environment; or
- (b) a material or compound controlled, prohibited or regulated from time to time by any Environmental Law, including asbestos.

Contract means the contract for the sale of the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities to be transferred to the Developer, to be entered into between the Landowner (as vendor) and the Developer (as purchaser) pursuant to clause 27 of this deed.

Contract Close Financial Model means the Financial Model as at the date of this deed.

Control in relation to a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

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

Cost includes a cost, charge, expense, liability, outgoing, fee, levy or impost and includes expenses incurred in connection with external advisers and consultants.

Date for HA Conditions Satisfaction means the date by which the last of the following is required to be satisfied under the HAFFF Project Agreement:

- (a) any of the Conditions Precedent (as defined in the HAFFF Project Agreement) which are required to be satisfied by the Date for Satisfaction (as defined in the HAFFF Project Agreement);
- (b) the novation of the HAFFF Project Agreement in accordance with clause 1.2 of Part A – Amendments to Common Terms;
- (c) the condition in clause 2.1(b)(v) of the Common Terms which is to be satisfied in accordance with clause 1.2(d)(i) of Part A – Amendments to Common Terms; and

- (d) the condition in clause 2.1(b)(viii) of the Common Terms which is to be satisfied in accordance with clause 1.2(d)(ii) of Part A – Amendments to Common Terms.

Date of Practical Completion means the date certified as the date on which Practical Completion occurred in the Certificate of Practical Completion.

Date of Substantial Commencement means the date on which the Developer achieves Substantial Commencement of the Works, as certified by the Independent Certifier in accordance with clause 16.2.

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

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

Default Rate means, for each daily balance, the rate that is 3% per annum above the 90 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if no such rate has been published, another rate set by the Landowner in good faith).

Defects means any design errors, construction faults, omissions, shrinkages, expansions or other construction or design defects in the Social Housing Works or the Shared Services Works.

Defects Period means the period commencing on the Date of Practical Completion and ending on the later of the periods contemplated by section 209(3) of the *Strata Schemes Management Act 2015* (NSW), even if that legislation does not apply to the Social Housing Works or the Shared Services Works.

Demolition Works means, in respect of the Property:

- (a) clearing of debris;
- (b) digging out and removal of footings, floor slabs, footpaths and driveways;
- (c) disturbing and scraping of topsoil in the footprint of the demolished and removed structures in layers of 100mm until such time as no further Contamination or asbestos containing material is identified;
- (d) remove any Contamination in any of the above ground structure being demolished or removed in a proper and workmanlike manner and in accordance with any applicable Environmental Law;
- (e) removal of stormwater pipes and pits;
- (f) removal of service sewer pipes;
- (g) removal of water pipes within the boundary of the Property;
- (h) disconnection of electricity supply;
- (i) removal of electricity supply cables and gas pipes;
- (j) disconnection of telephone services;
- (k) removal of telephone cables (Optus, Foxtel dish/cable. Etc);
- (l) capping off sewer, water, gas and stormwater connection (at the boundary of the Property);

- (m) installation of site fencing and hoardings, temporary amenities, erosion and sedimentation control measures;
- (n) removal of topsoil and vegetation (other than trees) including disposal of any Contamination therein in a proper and workmanlike manner and in accordance with any applicable Environmental Law;
- (o) installation of tree protection measures to all trees designated to be retained; and
- (p) suitable protection of existing services infrastructure including stormwater and sewer mains.

Design Documentation means all design documents, drawings, evaluations, sections, specifications and information required for the Development to reach completion and includes the Final Design Documentation.

Design Documentation Review Stages means Design Documentation Review Stage 1 and Design Documentation Review Stage 2 being the times when the Design Documentation is required to be submitted to the Landowner for consent under clause 7.2.

Design Documentation Review Stage 1 means the stage in the development of the Design Documentation when the design is 70% complete such that the Design Documentation is sufficiently detailed to provide to potential builders as part of the tendering process to identify and appoint the Builder.

Design Documentation Review Stage 2 means the stage in the development of the Design Documentation when the design is 100% complete such that the Design Documentation is sufficiently detailed for the Developer to obtain a Construction Certificate for the Works.

Developer Preliminary Period Conditions means each of the Preliminary Period Conditions which Part 1 of Attachment 1 identifies are to be satisfied by the Developer.

Developer's Proportion means a share as tenants in common which represents the proportion which the area of the Developer Social Housing Dwellings in the Development bears to the aggregate area of the Developer Social Housing Dwellings and Landowner Social Housing Dwellings in the Development.

Developer Rejection Right means the right of the Developer (acting reasonably) to reject a Landowner Variation under clause 11.2 if it would have one or more of the following effects:

- (a) it would have a material detrimental effect on:
 - (i) the structural integrity of any Works; or
 - (ii) the operation or the cost of the services; or
- (b) it would result in non-compliance with this deed.

Developer Social Housing Dwellings means that part of the Property identified as the 'Developer Social Housing Dwellings' in the Draft Plans of Subdivision, being that part of the Social Housing Dwellings to be transferred to the Developer in accordance with clause 27.

Developer Variation means:

- (a) in respect of the Works other than the Social Housing Works or the Shared Services Works, a Variation to those Works that:
 - (i) affects the exterior or lobby areas of a building; and
 - (ii) requires a change to the Final Design Documentation; or

- (b) in respect of the Social Housing Works or Shared Services Works, any Variation to those Social Housing Works or Shared Services Works.

Development means:

- (a) the obtaining of all necessary or desirable Approvals for the Works and the Subdivision Documents (other than the Agreed Development Consent);
- (b) the Early Works;
- (c) the planning, design, development, construction and commissioning of the Works; and
- (d) the dedication of any parts of the Property.

Development Consent means development consent under the EP&A Act from the Consent Authority for the development and use of the Property generally in accordance with the Concept Design Documents.

Development Costs means costs incurred by the Developer as follows:

- (a) upfront costs in respect of the Project, advisory, equity and other fees and ongoing costs in respect of the Project (in each case as specified in the Financial Model);
- (b) the cost of obtaining all necessary or desirable Approvals for the Works and the Subdivision Documents;
- (c) all costs incurred in relation to the removal of Contamination from the Property and the Environmental remediation of the Property;
- (d) any amounts payable by the Developer to a Builder under a Building Contract in accordance with the Building Contract; and
- (e) any other costs which the Landowner and the Developer agree are Development Costs for the purpose of this deed.

Development Costs Apportionment Statement means a statement prepared by the Developer in accordance with clause 24.2, outlining on a reasonable basis:

- (a) the portion of the Development Costs (plus GST) which relate to the development of the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities; and
- (b) the portion of the Development Costs (plus GST) which relate to the development of the Landowner Social Housing Dwellings and the Landowner's Proportion of the Public Areas and Shared Facilities.

Disclosure Materials means:

- (a) all the information or documentation made available to the Developer or its Associates by or on behalf of the Landowner, or otherwise obtained by or on behalf of the Developer prior to the making of this deed, including without limit, the applications for Development Consent prepared by the Landowner;
- (b) all documents attached to this deed (including without limit the Concept Design Documents); and
- (c) all information that is available on the public record, including all information which would have been disclosed or revealed at the date of this deed or at a time immediately before entering into this deed by searches of any public register.

Draft Plans of Subdivision means the draft plans of subdivision contained in Attachment 13.

Early Works means:

- (a) all works necessary to secure and protect the Property and maintain security of that part of the Property the subject of the Early Works Licence and the perimeter of the Property;
- (b) all works necessary to prepare an Application, including:
 - (i) surveying the Property;
 - (ii) erecting signs on the Property required to obtain an Approval;
 - (iii) conducting engineering, environmental and geotechnical investigations on the Property including drilling holes as required; and
 - (iv) the erection of site sheds and lay down areas on the Property;
- (c) the Demolition Works; and
- (d) any other preparatory works required to achieve Site Establishment,

but excluding the construction of improvements on the Property (other than as contemplated by paragraph (b) of this definition or as otherwise approved by the Landowner).

Eligible Entity has the meaning given to it under the HAFFF Project Agreement.

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above and any "security interest" as defined in sections 12(1) or (2) of the PPSA.

Environment includes all aspects of the surroundings of human beings.

Environmental Law means:

- (a) all Laws relating to land or water use, town planning, the environment, noise, development, construction or structures, coastal protection, water catchment, soil conservation, nature conservation, heritage conservation, human health, Contamination, radiation, pollution, waste disposal or land management;
- (b) all conditions of all consents, approvals, authorisations, licences and permits issued under any Law in clause (a); and
- (c) regulations or any order, guideline, gazettal, notice, direction or requirement of any government, statutory or other body or Authority in relation to these matters.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW), as amended from time to time.

An **Event of Default** occurs immediately:

- (a) upon an Insolvency Event occurring in respect of the Developer or a Parent of the Developer;
- (b) if the Developer permits or suffers a change of Control without the prior consent of Housing Australia and the Landowner;
- (c) if the Developer or any of the Developer's Associates commits any act of fraud or dishonesty in relation to the Project;
- (d) when clause 28.1(h) provides that an Event of Default has occurred;
- (e) if the Developer ceases to carry on its business or a material part of it, or threatens to do either of those things except to reconstruct or amalgamate while solvent on terms approved by the Landowner;
- (f) if any of the following occurs:
 - (i) all or a material provision of any Transaction Document is terminated or is or becomes void, avoided, illegal, invalid, unenforceable or limited in its effect;
 - (ii) it becomes impossible or unlawful for the Developer to perform any of its obligation under a Transaction Document; or
 - (iii) the Developer repudiates a Transaction Document or evinces evidence and intention to repudiate a Transaction Document or any party has the right to terminate or give a notice of termination due to breach or to rescind, treat as repudiated or avoid all or a provision of any Transaction Document;
- (g) if an Encumbrance created by or purportedly created by a Transaction Document does not have or ceases to have the priority it is expressed to have under the relevant Transaction Document or becomes ineffective to secure payment of the money or compliance with the obligations which it purports to secure;
- (h) if the Developer fails to satisfy one or more of the Minimum Requirements by the Sunset Date; or
- (i) if any of the funding agreements with Housing Australia and/or any Financier entered into with the Developer in respect of the Project are terminated.

Excluded Provisions means clauses 14, 16.1, 16.2, 25, 26 and 27.

Expert means a quantity surveyor with at least 5 years' relevant commercial and practical experience who holds relevant accreditations.

Existing Lease means the lease of the Property between the Landowner and Mission Australia Housing (ACN 003 683 261).

Final Design Documentation means all material and information required in order to commence and complete the Works including:

- (a) external building design (including working drawings) relating to façade, elevations, materials, setbacks, heights, roof profiles, massing, ground level frontages, vehicle and pedestrian access, public and service vehicle entrances and energy efficiency;
- (b) wind/weather protection;
- (c) landscaping;

- (d) overshadowing;
- (e) vehicle parking, access, loading and servicing – including without limitation bike parking, access for those with limited mobility;
- (f) footpaths and public access,

and which have been approved by the Landowner under this deed and for which a Construction Certificate for the Works has issued.

Final Preliminary Period Condition means the Preliminary Period Condition(s) for which the deadline for satisfaction is the Final Preliminary Period Conditions Deadline.

Final Preliminary Period Conditions Deadline has the meaning given to it in Item 7.

Financial Close means the stage of the Project when the following are satisfied:

- (a) the Developer Preliminary Period Condition identified as 'Finance' in Part 1 of Attachment 1; and
- (b) the conditions to drawdown of the Concessional Loan (as defined in the HAFFF Project Agreement) and Grant (as defined in the HAFFF Project Agreement) under the HAFFF Project Agreement.

Financial Model means the Developer's financial model for the Project in the form agreed by the parties at the date of this deed, as updated from time to time in accordance with this deed.

Financier means the providers of any facilities, financial arrangements or accommodation provided from time to time to the Developer for the purposes of carrying out the Project and may, where the context permits, include any agent or trustee of such Financiers.

Financier Tripartite Deed means the deed between the Landowner, Housing Australia, the Developer and the Financier in respect of the Project.

Financier's Side Deed means a deed generally in the form of Attachment 10 and otherwise in a form acceptable to the Landowner, the Developer and any Financier (acting reasonably).

Funding Documents has the meaning given to it under the HAFFF Project Agreement.

Force Majeure Event means the occurrence of any of the following events or circumstances:

- (a) flood, earthquake, landslide, fire, tropical cyclone, natural disaster, lightning strike, storm, seismic activity, tsunami or mudslide;
- (b) war, invasion, act of foreign enemies, civil war, rebellion, terrorism, sabotage, riot, embargo, trade or custom restriction, requisition or compulsory acquisition by an authority, revolution, insurrection or military or usurped power, martial law or other like hostilities;
- (c) a declared epidemic or pandemic; or
- (d) an Unexpected Adverse Impact,

provided such event or circumstance:

- (d) occurs at or in the direct vicinity of the Property;
- (e) is beyond the reasonable control of the Developer;

- (f) is not caused or contributed to by a breach of this deed or the HAFFF Project Agreement by, or an act or omission of, the Developer or the Developer's Associates; and
- (g) could not reasonably be expected to have been prevented, avoided or overcome by the Developer exercising a standard of care and diligence consistent with that of a prudent and competent developer in the circumstances.

General Contingency Amount means an amount available for:

- (a) early contractor involvement cost overrun (including costs associated with site investigations that occur after Demolition Works);
- (b) professional fees that the Developer incurs prior to Financial Close which are considered by the Landowner to be required to progress to a Construction Certificate and any Modifications;
- (c) development management fees and project management fees that the Developer incurs prior to Financial Close which are required to progress to a Construction Certificate and any Modifications;
- (d) statutory costs incurred prior to Financial Close,

provided that those costs are not recovered by the Developer as part of the Reimbursable Development Costs.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Good Industry Practice means the practices that must be followed when Work is being undertaken:

- (a) in a sound and workmanlike manner exercising the degree of care, skill, professionalism, prudence, due diligence which would reasonably and ordinarily be expected from a skilled and experienced developer, contractor, manager or consultant, subcontractor or supplier engaged in the performance of work of a nature the same as, or substantially similar to, the work required to design, construct and complete the Development;
- (b) with due care and skill in applying nationally accepted urban design and building design, engineering, construction and management procedures;
- (c) with due expedition and without unnecessary or unreasonable delays having regard to any Force Majeure Event;
- (d) in a manner which allows the Works to be efficiently performed;
- (e) in accordance with all applicable Laws and Australian Standards; and
- (f) using new materials of merchantable quality which are fit for their Intended Purpose.

GST includes the amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any other State or Territory).

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

GST Withholding Amount means the amount that the Recipient is required to withhold on account of GST and pay to the Commissioner of Taxation as notified by the Supplier in the GST Withholding Notice.

GST Withholding Notice means the notification required under section 14-255 of Schedule 1 to the *Taxation Administration Act 1953* (Cth) to be made on or before the making of the supply which states whether or not the Recipient is required to make a payment on account of GST to the Commissioner of Taxation and, if so, the amount of the payment.

GST law has the same meaning as in the GST Act.

Guidelines means the guidelines as contained in Attachment 9.

HAFFF means the Housing Australia Future Fund Facility.

HAFFF Funding Agreement means the funding agreement in respect of the Project entered into between Housing Australia and the Landowner.

HAFFF Project Agreement means the project agreement in respect of the Project entered into between Housing Australia and the Landowner.

Home Building Act means the *Home Building Act 1989* (NSW).

Housing Provider means a person who manages or provides housing services at the Specified Dwellings.

Housing Regulator means any Authority with primary responsibility under CHP Laws for the registration and regulation of Housing Providers who are community housing providers in respect of their community housing activities.

Independent Certifier means:

- (a) provided that that person is approved by the Landowner (such approval not to be unreasonably withheld), the certifier jointly appointed by the Developer and Housing Australia in connection with the HAFFF Project Agreement; or
- (b) such other certifier agreed by the Landowner and the Developer for the purpose of this deed.

Independent Certifier's Deed means the deed substantially in the form of Attachment 15.

Initial Investigations and Early Works Licence means the licence relating to the Early Works on the terms and conditions contained in Attachment 11.

Initial Investigations and Works means all works necessary to prepare an Application, including:

- (a) surveying the Property;
- (b) erecting signs on the Property required to obtain an Approval; and
- (c) conducting engineering, environmental and geotechnical investigations on the Property including drilling holes as required.

Initial Investigations and Works Purpose means carrying out the Initial Investigations and Works.

Insolvency Event means the occurrence of any one of the following events in respect of an entity:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a controller (as defined in the Corporations Act) appointed to its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute, or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by Housing Australia and the Landowner);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 21 days), resolution passed, or any other action taken, in each case in connection with that person, in respect of any of paragraphs (a), (b) or (c) of this definition;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which Housing Australia reasonably deduces it is so subject);
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to paragraphs (a) to (g) of this definition happens in connection with that person under the law of any jurisdiction.

Intellectual Property means all current and future intellectual property rights (including without limitation all copyright, trademark, design, patent and confidentiality rights) created for or on behalf of the Developer and the Developer's right, title and interest in and to all:

- (a) the Design Documentation;
- (b) other materials or information prepared by or on behalf of the Developer as part of or in connection with the Development; and
- (c) any enhancements or modifications of the items referred to in (a) and (b).

Intended Purpose means the purposes that are set out in or are reasonably ascertainable from this deed.

Item means an item in the Reference Schedule to this deed.

Landowner Capital Advance means the amount referred to in Item 12, as adjusted in accordance with clause 15.

Landowner's Intellectual Property has the meaning given to it in clause 22.7(a).

Landowner Preliminary Period Conditions means each of the Preliminary Period Conditions which Part 2 of Attachment 1 identifies are to be satisfied by the Landowner.

Landowner's Proportion means a share as tenants in common which represents the proportion which the area of the Landowner Social Housing Dwellings in the Development bears to the aggregate area of the Social Housing Dwellings in the Development.

Landowner Rejection Right means the right of the Landowner to reject Applications, Approvals, Design Documentation, Modifications and/or Developer Variations if:

- (a) it would have one or more of the following effects:
 - (i) it would prevent the Developer from achieving the Minimum Requirements;
 - (ii) any part of the Social Housing Works or the Landowner's use of the Landowner Social Housing Dwellings being detrimentally affected from what is in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation);
 - (iii) the operation of any services which service the Landowner Social Housing Dwellings being detrimentally affected from what appears in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation);
 - (iv) the standard of finishes in, the design or the appearance of the Landowner Social Housing Dwellings being detrimentally altered from what appears in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation);
 - (v) the Works would not be in accordance with any relevant Law, relevant Australian Standards which have the force of Law and relevant industry codes which have the force of Law;
 - (vi) a material increase in the cost of the ongoing operation or maintenance of the Landowner Social Housing Dwellings to that contemplated in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation);
 - (vii) the quality, durability, maintainability or functionality of the Landowner Social Housing Dwellings (as set out in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation) being detrimentally affected or altered;
 - (viii) any part of the public domain or Public Areas and Shared Facilities being detrimentally affected from what is in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation);
 - (ix) anything that detrimentally affects the blending or integration of the Landowner Social Housing Dwellings and the Developer Social Housing Dwellings from what appears in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation);
 - (x) where a building contains a mixture of Landowner Social Housing Dwellings and other uses, it would result in floor plates comprised of a mix of:
 - A. Landowner Social Housing Dwellings; and
 - B. other uses;

- (xi) any part of the public domain or community facilities being detrimentally affected (other than in a minor respect) from what is in the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation); or
- (xii) a breach of this deed by the Developer or the Landowner;
- (b) it would result in a change to the then current Sunset Date;
- (c) it is otherwise inconsistent with the Project Objectives or the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation) with respect to Social Housing Dwellings and Shared Facilities and Services; or
- (d) the Works when completed would not achieve the Social Housing Product Requirements and Finishes.

Landowner Social Housing Dwellings means that part of the Property identified as the 'Landowner Social Housing Dwellings' in the Draft Plans of Subdivision to be retained by the Landowner.

Landowner Variation means a Variation that affects the Social Housing Works or the Shared Services Works.

Landowner Variation Costs means all Costs incurred by the Developer in carrying out a Landowner Variation under clause 11.3 and including:

- (a) reasonable consultants' and design fees;
- (b) the relevant Builder's costs and margin (which is inclusive of preliminaries, overheads and profit); and
- (c) delay costs payable under the Building Contract (if any),

less any savings in Costs arising from the Landowner Variation.

Latent Condition means any physical condition on the Property, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by an experienced, prudent and competent person engaged in respect of works of a similar nature to the Works if it had done those things that such a person should reasonably have done.

Law includes all statutes, regulations, by-laws, ordinance and other delegated legislation and any rule of common law or equity from time to time.

LCA Paid Amount means the amount of each advance of the Landowner Capital Advance that has been paid to the Developer under clause 14.2.

LHA Gold Level has the meaning given to it under the Livable Housing Design Guidelines as published by Livable Housing Australia as at the date of this deed.

Loss means all losses (including, loss of profit, loss of expected savings, opportunity costs, loss of business (including loss or reduction of goodwill) and damage to reputation), liabilities, damages, costs, charges and expenses and includes tax.

Lot means a lot created on registration of a Plan of Subdivision.

Material Adverse Effect means as the context permits a material adverse effect on:

- (a) the ability of the Developer to comply with its material obligations under this deed;
or
- (b) the Landowner's rights under this deed; or
- (c) the business or financial condition of the Developer.

Milestone means each of the Milestones referred to in column 2 of Attachment 2.

Milestone Date means, in respect of each Milestone, the date opposite the Milestone in Attachment 2, as may be extended in accordance with this deed.

Minimum Requirements has the meaning given to it in clause 4.1.

Modification means a modification of a Development Consent within the meaning of section 4.55 or section 4.56 of the EP&A Act.

Moral Rights means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" and other analogous rights arising under any Law (including the *Copyright Act 1968* (Cth) or any Law outside Australia), that exists now or in the future anywhere in the world.

Native Title Application means any application made pursuant to the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW).

Nominated Consultants means the following consultants and subcontractors:

- (a) any of the following consultants or subcontractors who are both engaged by the Developer (or by a consultant engaged by the Developer) prior to Financial Close and are providing advice in relation to the Project:
 - (i) independent certifier;
 - (ii) quantity surveyor;
 - (iii) principal certifying authority;
 - (iv) surveyor;
 - (v) architect;
 - (vi) landscape architect;
 - (vii) engineer – structural;
 - (viii) engineer – flood;
 - (ix) engineer – civil;
 - (x) engineer – façade;
 - (xi) engineer – fire services;
 - (xii) consultant providing advice in relation to mechanical services;
 - (xiii) consultant providing advice in relation to hydraulic services;
 - (xiv) consultant providing advice in relation to electrical services;

- (xv) consultant providing advice in relation to vertical movement;
 - (xvi) consultant providing advice in relation to fire services;
 - (xvii) consultant providing advice in relation to traffic and transport;
 - (xviii) consultant providing advice in relation to waste;
 - (xix) consultant providing advice in relation to environmentally sustainable development;
 - (xx) consultant providing advice in relation to the Building Code of Australia;
 - (xxi) consultant providing advice in relation to access;
 - (xxii) consultant providing advice in relation to substation design;
 - (xxiii) water services coordinator;
 - (xxiv) consultant providing advice in relation to lighting;
 - (xxv) site auditor;
 - (xxvi) consultant providing geotechnical advice;
 - (xxvii) consultant providing advice in relation to contamination and remediation;
 - (xxviii) consultant providing advice in relation to waterproofing;
 - (xxix) arborist;
 - (xxx) consultant providing advice in relation to wayfinding and signage;
 - (xxxi) planner;
 - (xxxii) consultant providing advice in relation to wind,
 - (xxxiii) consultant providing advice in relation to acoustics; and
 - (xxxiv) consultant providing advice in relation to heritage; and
- (b) any other consultant not listed in paragraph (a) who is engaged by the Developer prior to Financial Close, provided that the Developer has provided details of the relevant consultant and their engagement to the PCG and has obtained the prior approval of the Landowner to the relevant consultant and their engagement (such approval not to be unreasonably withheld provided that the services of the relevant consultant are reasonably required to obtain a Construction Certificate and/or to progress any Modifications for the Project).

NSW LRS means the New South Wales Land Registry Services.

Occupation Certificate means a certificate referred to in section 6.4(c) of the EP&A Act.

Other Preliminary Period Condition has the meaning given in clause 3.7(a).

Other Preliminary Period Condition Deadline has the meaning given in clause 3.7(a).

Outgoings means all Costs incurred or levied on the Property or in connection with the Project including:

- (a) rates, taxes (including land taxes), assessments, levies, contributions, fees and other charges imposed by an Authority, in respect of the Property or the Project together with any interest, fines and penalties in connection with them (except if imposed on, or calculated having regard to, the net income of the Landowner); and
- (b) Costs for installing, connecting, supplying, renting, operating, maintaining, servicing, repairing and replacing services used by the Developer or the Developer's Associates in connection with the Project and upgrading those services to comply with any Law; and
- (c) any other Costs (including strata and other levies) necessarily incurred by the Landowner because of its ownership of the Property,

but Outgoings do not include the Landowner's internal administrative Costs or Costs of any valuation of the Property obtained by the Landowner from time to time for its own purposes unrelated to the Developer's use and occupation of the Property.

Parent of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
 - (i) controls the composition of the board of directors of the first mentioned person; or
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
 - (iii) holds or has a beneficial interest in more than one-half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Developer, its interest in this document is property subject to that trust, a person who:
 - (i) controls the right to appoint the trustee;
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
 - (iii) holds or has a beneficial interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Developer, its interest in this document is property subject to that trust, a person who:
 - (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - A. appoint or change the trustee; or
 - B. give directions to the trustee; or

- C. vary the constituent document of the trust; or
- D. appoint or remove beneficiaries; or
- E. decide to whom any distribution is made or the amount of any distribution.

(d) A person is also a **Parent** of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.

PCG means the project control group established in accordance with clause 21.1.

PCG Report means the report referred to in clause 21.8 and which is prepared in compliance with that clause.

Planning Agreement means a voluntary planning agreement or other arrangement within the meaning of section 7.4 of the EP&A Act.

Plan of Subdivision includes a plan of Subdivision for the Property or any part of the Property including:

- (a) a Strata Plan; and
- (b) a plan to effect any other form of Subdivision.

Pollution means the release into the Environment of any substance or material whether liquid, solid or gaseous which causes or threatens material harm to the Environment within the meaning of section 147 of the *Protection of the Environment Operation Act 1997* (NSW).

PPSA means the *Personal Property Securities Act 2009* (Cth).

Practical Completion means, in respect of the Works, the point of time at which the following are satisfied in respect of the Works:

- (a) the Independent Certifier is satisfied that the Works have been completed or installed in accordance with:
 - (i) the Agreed Development Consent;
 - (ii) the Final Design Documentation; and
 - (iii) the obligations of the Developer under this deed,
 except for minor omissions and minor defects:
 - (iv) which do not prevent the Works from being reasonably capable of being used for their Intended Purpose; and
 - (v) rectification of which will not prejudice the use of the Works or the Property for their Intended Purpose;
- (b) all compliance reports required to be delivered to the relevant Consent Authority for the issue of certificates referred to in (d), (e) and (f) below relevant to the Works have been delivered to the relevant Consent Authority;
- (c) the Works are capable of being lawfully used and occupied for their Intended Purpose with the consent of all relevant Authorities;
- (d) (if relevant) a Compliance Certificate for the Works has been issued;

- (e) (if relevant) an Occupation Certificate for the Works has been issued;
- (f) (if relevant) a Complying Development Certificate for the Works has been issued;
- (g) the Developer has procured the registration at NSW LRS of the Subdivision Documents consented to by Landowner including the approved draft strata plans for the Social Housing Dwellings; and
- (h) the 'Operations Commencement Test' (as defined in the HAFFF Project Agreement) is satisfied.

Preliminary Period means the period commencing on the date of this deed and ending on the first to occur of:

- (a) the date on which the last of the Preliminary Period Conditions is satisfied or waived in accordance with this deed; and
- (b) the Final Preliminary Period Conditions Deadline.

Preliminary Period Conditions means each of the conditions set out in Attachment 1.

Preliminary Period Conditions Deadline means, in respect of each Preliminary Period Condition, the date as set out in Attachment 1 in respect of that Preliminary Period Condition, subject to extensions in accordance with this deed.

Preliminary Period Termination Trigger means when one or more of the events set out in Part 3 of Attachment 1 occurs.

Project means the development of the Property in accordance with this deed to meet the Project Objectives.

Project Objectives means the objectives for the Project contained in clause 2.2.

Property means the property identified in Item 4 or any or all of it as the context requires.

Proposed Contract means the proposed form of contract for the sale of land for the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities contained in Attachment 3 (as changed under clause 27.3, if applicable).

Public Areas and Shared Facilities means all open spaces, courtyards (excluding internal courtyards), parks, community areas, community facilities, shared facilities and plant and as shown on the Concept Design Documents or, once prepared, the Final Design Documentation.

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

RAB Developer means a developer as defined in section 4 of the RAB Act.

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

Reference Schedule means the reference schedule forming part of this deed.

Registered Charity means an entity that is registered as a charity by the Australian Charities and Not-for-profits Commission.

Reimbursable Development Costs means, to the extent actually incurred by the Developer prior to Financial Close, the following costs:

- (a) those incurred after the date of this deed in respect of the early contractor involvement process;
- (b) development management fees and project management fees;
- (c) professional fees for Nominated Consultants; and
- (d) statutory costs.

Relic means:

- (a) minerals of commercial value;
- (b) fossils;
- (c) relics, articles or objects of antiquity or of anthropological or archaeological interest;
- (d) coins and other articles of value;
- (e) historical archaeological Lands; and
- (f) Aboriginal archaeological relics.

Resolution Institute means Resolution Institute or, if no such organisation exists, then the President of the Law Society of New South Wales.

Shared Services Works means the Works insofar as they relate to the Public Areas and Shared Facilities and any works in connection with the common areas in the building erected as part of the Works.

Site Conditions means any condition affecting or potentially affecting the Property whether latent or patent including, without limitation:

- (a) ground water, ground water hydrology and the effects of any de-watering;
- (b) physical conditions on, above or below the surface of land;
- (c) topography of land surface and sub-surface conditions and geology including rock or other materials encountered on land;
- (d) climatic and weather conditions, rain surface water run-off and drainage, water seepage, wind, wind-blown dust and sand in seasons;
- (e) all existing systems and services above or below the surface of the land and the location of all facilities with which such systems and services are connected; and
- (f) all other physical conditions and characteristics of land on, above or below the surface (including improvements) which may affect the performance by the Developer of its obligations under this deed,

whether relating to the Property, the surroundings of the Property and also the availability and condition of roads and all utility services servicing, or required to the Property and the Project.

Site Establishment means that part of the Works comprising site establishment on the Property including installation of site amenities, connection of temporary services and erection of hoardings.

Site Investigations – Contamination means the scope of the investigations detailed in Part A of Attachment 14.

Site Investigations – Other means the scope of the investigations detailed in Part B of Attachment 14.

Social Housing means accommodation for people on a very low or low income that meet the required eligibility criteria that is managed by not-for-profit organisations within New South Wales.

Social Housing Dwellings means dwellings for Social Housing purposes to be constructed as part of the Project, which includes the Developer Social Housing Dwellings and Landowner Social Housing Dwellings.

Social Housing Product Requirements and Finishes means the requirements set out in Attachment 5 in respect of the Social Housing Dwellings.

Social Housing Works means the Works insofar as they relate to the Landowner Social Housing Dwellings.

Specified Dwelling has the meaning given to it in the HAFFF Project Agreement.

Strata Documents means each or any (as the context may require):

- (a) Strata Plan Instrument;
- (b) Strata Management Statement; and
- (c) Strata By Law Instrument.

Strata Development Act means the *Strata Schemes Development Act 2015* (NSW).

Strata Management Act means the *Strata Schemes Management Act 2015* (NSW).

Strata Management Statement means a statement under Part 6 of the Strata Development Act.

Strata Plan means a strata plan with respect to the Property creating a Lot for each unit and that unit's car space(s) and utility space(s).

Strata Plan Instrument the instrument intended to be lodged with the Strata Plan creating easements, covenants or restrictions.

Subdivision and Subdivided means a subdivision or consolidation of the Property (or any part of it) under the Subdivision Legislation.

Subdivision Documents means the Plan of Subdivision and each of the documents intended to be lodged for registration together with a Plan of Subdivision and includes:

- (a) a building management statement for each building within the Project which contains both Landowner Social Housing Dwellings and Developer Social Housing Dwellings;
- (b) any applicable Strata Documents; and
- (c) any other associated instrument creating easements, covenants or restrictions.

Subdivision Legislation means any of the *Conveyancing Act 1919* (NSW), *Real Property Act 1900* (NSW), *Community Land Development Act 2021* (NSW), *Strata Development Act*, *Strata Management Act*, *Roads Act 1993* (NSW) or the EP&A Act.

Substantial Commencement means the later of:

- (a) completion of Site Establishment;
- (b) the satisfaction or waiver of the last of the Preliminary Period Conditions to be satisfied or waived in accordance with this deed.

Substantial Commencement Milestone Date means the date described as such in Attachment 2 (such date being subject to extension in accordance with clause 23).

Sunset Date means the date described as such in Item 18 of the Reference Schedule.

Supporting Documents means all documents and other material required by any Law to be lodged in support of an application for an Approval to enable it to be assessed by the relevant Authority.

Threatened Species Claim means a claim made or legal proceedings commenced in connection with the existence of a threatened species, population or ecological community or the habitat of a threatened species, population or ecological community as regulated by the *Biodiversity Conservation Act 2016* (NSW), the *National Parks and Wildlife Act 1974* (NSW) or the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

Transaction Documents means:

- (a) this deed;
- (b) the Contract;
- (c) the Financier's Side Deed;
- (d) the Builder's Side Deed; and
- (e) the CHP Management Agreement.

Trigger Event occurs if:

- (a) the Developer does not achieve Practical Completion by the Sunset Date;
- (b) the Developer:
 - (i) ceases to be a community housing provider which is registered as a "Tier 1" community housing provider with the National Regulatory System – Community Housing; or
 - (ii) is subject to any adverse instruction or direction given (or adverse action taken or appointment made) by the relevant Housing Regulator under the CHP Laws in respect of:
 - (A) any Specified Dwelling; or
 - (B) the Developer, or the affairs of the Developer, that has an adverse impact on the ability of the Developer to manage, or to make available, any Specified Dwelling;
- (c) the Developer ceases to be a Registered Charity;
- (d) the Developer fails to maintain the insurances required by this deed in accordance with this deed;
- (e) the Developer is in breach of any Approvals, Laws or Australian Standards applicable to it or the performance of its obligations under this deed or the HAFFF

Project Agreement and such breach has, or is likely to have a Material Adverse Effect (as defined in the HAFFF Project Agreement);

- (f) where the Developer is required to be accredited under the WHS Accreditation Scheme, the Developer ceases to maintain its accreditation under the WHS Accreditation Scheme;
- (g) there is any increase to the senior debt financing of the Project from that as set out in the Financial Model after Financial Close without the prior written consent of the Landowner;
- (h) the Developer or any of the Developer's Associates do anything that brings (or is likely to bring the reputation of the Landowner or Housing Australia into disrepute in a significant way;
- (i) the Developer does not pay any amount payable to the Landowner within 20 Business Days of the date on which payment is required under any Transaction Document;
- (j) the Developer does not comply with any of their material obligations under any Transaction Document;
- (k) the Developer breaches any of the funding agreements with Housing Australia and/or any Financier in respect of the Project;
- (l) a person becomes or ceases to be a Parent of the Developer or otherwise a dealing restricted by clause 34 occurs without the Landowner's prior written consent;
- (m) a person is appointed to investigate or manage any part of the affairs of the Developer or a Parent of the Developer under, the *Australian Securities and Investments Commission Act 2001* (Cth) and such direction or investigation has, or is likely to have, a Material Adverse Effect;
- (n) a judgment, order or Encumbrance in an amount in excess of \$1,000,000 is enforced against any property of the Developer or a Parent of the Developer;
- (o) the Developer or a Parent of the Developer stops payment, ceases to carry on its business or a material part of it, or threatens to do either of those things except to reconstruct or amalgamate while solvent on terms approved by the Landowner (acting reasonably); or
- (p) without the Landowner's consent the Developer creates an Encumbrance over its interest in this deed or the CHP Management Agreement or any of its rights or obligations under this deed or the CHP Management Agreement.

Trigger Notice means a notice given by the Landowner under clause 28.

Unacceptable Condition means a condition of a Development Consent which results in or could result in one or more of the following:

- (a) a material adverse change to the Concept Design Documents (or, if finalised at the relevant time, the Final Design Documentation);
- (b) any reduction in excess of 4% to the minimum number of the Landowner Social Housing Dwellings as specified in Item 15 of the Reference Schedule;
- (c) any reduction in excess of 4% to the minimum number of the Developer Social Housing Dwellings as specified in Item 15 of the Reference Schedule;

- (d) any changes for the mix of unit sizes and average unit size as specified in Item 15 of the Reference Schedule;
- (e) the Developer being prevented from achieving the Minimum Requirements;
- (f) a reduction in the quality of the Social Housing Dwellings to be delivered pursuant to this deed from the quality required by the Social Housing Product Requirements and Finishes;
- (g) a material adverse effect on the Project Objectives being able to be achieved;
- (h) a party breaching any Law or its obligations under a Transaction Document; or
- (i) there is no reasonable likelihood that Practical Completion will be achieved by the Sunset Date.

Unexpected Adverse Impact means any of the following site conditions:

- (a) Relics located in the Property; or
- (b) the geotechnical condition of the Property (other than Contamination),

the existence of which will have a material adverse impact on the Developer's ability to develop the Property for Social Housing Dwellings in accordance with the Project Objectives and to satisfy the Minimum Requirements, where both the relevant site condition and that material adverse impact would not reasonably have been anticipated at the date of this deed by a prudent and competent developer assuming it (without limitation) reviewed the information made available by the Landowner (including all Disclosure Materials) or in the Developer's possession or obtainable by making reasonable enquiries.

Vacant Possession means vacant possession of the Property noting that the presence on the Property of existing improvements, abandoned chattels or other detritus will not be regarded as a failure to obtain vacant possession of the Property.

Variation means any of the following:

- (a) an increase, decrease, deletion or omission, or other change to any part of the Works;
- (b) the carrying out of additional works; or
- (c) the demolition or removal of material or work no longer required.

WHS Accreditation Scheme means the Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the *Federal Safety Commissioner Act 2022* (Cth).

WHS Act means the *Work Health and Safety Act 2011* (NSW) (as amended and revised from time to time).

WHS Regulation means the *Work Health and Safety Regulation 2017* (NSW) (as amended and revised from time to time).

Works means the works to be carried out on the Property by the Developer to effect the Development of the Property in accordance with:

- (a) the Agreed Development Consent;
- (b) the Final Design Documentation; and
- (c) this deed,

and includes the consolidation of the title for the Property and the further subdivision of the titles to the Developer Social Housing Dwellings and Landowner Social Housing Dwellings.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) **“person”** includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party’s executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **“includes”** in any form is not a word of limitation; and
- (k) a reference to **“\$”** or **“dollar”** is to Australian currency.

1.3 Order of precedence

In the event of any inconsistency, ambiguity or discrepancy between the various documents comprising or referred to this deed:

- (a) the order of precedence will be as follows:
 - (i) this deed;
 - (ii) the Final Design Documentation; and
 - (iii) the Agreed Development Consent.
- (b) where the inconsistency, ambiguity or discrepancy is not resolved by the application of the principle in clause 1.3(a), the interpretation which prescribes or requires the highest standard, quality or quantum will take precedence.

2. Project Outline, Project Objectives and Acknowledgments

2.1 Project Outline

The parties acknowledge and agree that:

- (a) the Developer must develop the Property for Social Housing and Public Areas and Shared Facilities in accordance with this deed;
- (b) the Landowner will be responsible for obtaining an Agreed Development Consent for the Project but otherwise the Developer will be responsible for obtaining all Approvals required for the Project;
- (c) the Developer must undertake detailed design for the Works in accordance with this deed;
- (d) the Developer will secure funding and financing for the Project, which may include funding from Housing Australia;
- (e) the Landowner will novate to the Developer the HAFFF Project Agreement entered into by the Landowner in respect of the Project;
- (f) the Landowner will provide to the Developer the Landowner Capital Advance in accordance with this deed;
- (g) the Developer will procure, at its own Cost and risk, delivery of the Project including designing, remediating, constructing and delivering the Project;
- (h) the Developer will be responsible for ensuring the delivery of a housing tenure mix in accordance with the Agreed Development Consent;
- (i) subject to the Landowner Capital Advance, the Developer will procure, at its own Cost and risk, delivery of the Public Areas and Shared Facilities in accordance with this deed;
- (j) the Developer will be responsible for ensuring that the Works will deliver, satisfy, meet or exceed all the specifications, requirements and outcomes committed to in this deed;
- (k) subject to the Developer achieving Practical Completion of the Works in accordance with this deed, the Landowner will transfer freehold title to the Developer of the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities in accordance with the Contract;
- (l) the Landowner and the Developer will enter into the CHP Management Agreement on the date of this deed; and
- (m) the Landowner will grant to the Developer a lease in respect of the completed Landowner Social Housing Dwellings in accordance with the CHP Management Agreement.

2.2 Project Objectives

The parties acknowledge and agree that the objectives for the Project are to:

- (a) maximise Social Housing outcomes, by facilitating the delivery of high quality, fit for purpose Social Housing Dwellings that appropriately meet product standards and provide positive outcomes for tenants' health and wellbeing;

- (b) design and deliver Social Housing Dwellings which are:
 - (i) tenure blind;
 - (ii) in respect of the Landowner Social Housing Dwellings, located within a single stratum or lot; and
 - (iii) integrated within the development and broader areas context;
- (c) optimise value for money for the NSW Government in the form of Social Housing and additional financial payments and contribute to place-making outcomes; and
- (d) contribute Social Housing to the NSW housing system with the intention of maintaining the availability of that Social Housing for [REDACTED] (provided that after this [REDACTED] period, the dwellings must remain as either Social Housing or Affordable Housing),

(the **Project Objectives**).

2.3 Acknowledgements – No Interest in Property

The parties acknowledge and agree that:

- (a) nothing in this deed operates to transfer to or vest or create in the Developer any estate or interest in the Property; and
- (b) the legal and beneficial ownership of the Property will remain vested in the Landowner until it is transferred or dedicated in accordance with this deed.

2.4 Appointment of Independent Certifier

- (a) Within 20 Business Days after the later of:
 - (i) date of this deed; and
 - (ii) the date on which the Independent Certifier is jointly appointed by the Developer and Housing Australia in connection with the HAFFF Project Agreement,

the Developer and the Landowner must appoint the Independent Certifier and that appointment must be in the form of the Independent Certifier's Deed.
- (b) If the Independent Certifier's Deed is terminated in accordance with its terms or the Independent Certifier is, for any reason, not appointed or ceases to act as the Independent Certifier, the Landowner and the Developer must jointly engage another person approved by the Landowner to act as Independent Certifier on substantially the same terms as the Independent Certifier's Deed. Unless otherwise agreed by the parties, the Independent Certifier appointed in connection with this deed must at all times be the same person who is appointed to act as independent certifier by the Developer and Housing Australia in connection with the HAFFF Project Agreement.
- (c) The Landowner and the Developer must each pay to the Independent Certifier 50% of the costs and expenses of the Independent Certifier (including the Independent Certifier's professional fees and any costs incurred in exercising or purporting to perform its obligations under the Independent Certifier's Deed).

3. Preliminary Period Conditions

3.1 Preliminary Period Conditions

The provisions of this deed commence on the date of this deed, other than the Excluded Provisions. The parties acknowledge and agree that the Excluded Provisions do not take effect until all of the Preliminary Period Conditions have been satisfied (or, where applicable, waived) in accordance with this deed.

3.2 Reasonable endeavours to satisfy

(a) The Landowner must:

- (i) use reasonable endeavours to satisfy the Landowner Preliminary Period Conditions as soon as reasonably practicable after the date of this deed, but by no later than the applicable Preliminary Period Conditions Deadline (as identified in Attachment 1);
- (ii) keep the Developer regularly informed of progress in satisfying the Landowner Preliminary Period Conditions and the date the Landowner expects that the Landowner Preliminary Period Conditions will be satisfied; and
- (iii) as each Landowner Preliminary Period Condition is satisfied, notify the Developer in writing of the date the relevant Landowner Preliminary Period Condition was satisfied no later than 2 Business Days after the date of satisfaction.

(b) The Developer must:

- (i) use reasonable endeavours to satisfy the Developer Preliminary Period Conditions as soon as reasonably practicable after the date of this deed, but by no later than the applicable Preliminary Period Conditions Deadline (as identified in Attachment 1);
- (ii) keep the Landowner regularly informed of progress in satisfying the Developer Preliminary Period Conditions and the date the Developer expects that each Developer Preliminary Period Condition will be satisfied; and
- (iii) as each Developer Preliminary Period Condition is satisfied, notify the Landowner in writing of the date the relevant Developer Preliminary Period Condition was satisfied no later than 2 Business Days after the date of satisfaction.

3.3 Waiver of Preliminary Period Conditions

- (a) The parties acknowledge and agree that Attachment 1 sets out which (if any) of the parties is entitled to waive each Preliminary Period Condition.
- (b) A party entitled to waive a Preliminary Period Condition may do so if it gives notice to the other party in writing on or before the applicable Preliminary Period Conditions Deadline specifying the Preliminary Period Condition being waived.
- (c) Subject to clause 3.3(d), a notice given under and in accordance with clause 3.3(b) is effective to waive the relevant Preliminary Period Condition.
- (d) Despite clause 3.3(c), if Attachment 1 states that a Preliminary Period Condition may only be waived by the agreement of the Landowner and the Developer, then

that Preliminary Period Condition is only waived once agreed by the Landowner and the Developer.

3.4 Landowner's right to dispute Certified Estimates

- (a) The Developer must provide to the Landowner each of the Certified Estimates at least 1 month prior to the applicable Preliminary Period Conditions Deadline.
- (b) The Landowner must, within 10 Business Days of receiving a Certified Estimate either approve or reject or request further information in respect of the relevant Certified Estimate. The Landowner may reject a Certified Estimate if (acting reasonably) it does not believe that the Certified Estimate reflects either:
 - (i) (in respect of Certified Estimated Remediation Costs) a reasonable estimate of the Costs to remediate or otherwise lawfully address the Contamination of the Property identified as a result of the Site Investigations – Contamination so that the Property is capable of being used for its Intended Purpose as contemplated by this deed; or
 - (ii) (in respect of Certified Estimated Site Condition Costs) a reasonable estimate of the Costs to rectify or otherwise overcome any Unexpected Adverse Impacts affecting the Property identified as a result of the Site Investigations – Other so that the Property is capable of being used for its Intended Purpose as contemplated by this deed.
- (c) The Landowner may (acting reasonably) request the Developer to provide further information in relation to a Certified Estimate to assist the Landowner to determine whether it approves the relevant Certified Estimate. The Developer must promptly provide to the Landowner the information requested by the Landowner pursuant to this clause 3.4(c). Once provided, clause 3.4(b) applies, except that the period for the Landowner to approve or reject or request further information is 5 Business Days after the provision of the further information.
- (d) If the Landowner notifies the Developer that it rejects a Certified Estimate, the Developer and the Landowner must consult in good faith with respect to, and use their reasonable endeavours to agree on:
 - (i) (in respect of Certified Estimated Remediation Costs) a reasonable estimate of the Costs to remediate or otherwise lawfully address the Contamination of the Property identified as a result of the Site Investigations – Contamination so that the Property is capable of being used for its Intended Purpose as contemplated by this deed; or
 - (ii) (in respect of Certified Estimated Site Condition Costs) a reasonable estimate of the Costs to rectify or otherwise overcome any Unexpected Adverse Impacts affecting the Property identified as a result of the Site Investigations – Other so that the Property is capable of being used for its Intended Purpose as contemplated by this deed.
- (e) If the Landowner and the Developer do not resolve any dispute in relation to a Certified Estimate within 10 Business Days after commencement of the consultation under clause 3.4(d) or no consultation has been held within 12 Business Days after the date when the Landowner notifies the Developer that it rejects the Certified Estimate, the dispute will be referred for determination in accordance with clause 35.

3.5 Early Works

- (a) The parties acknowledge and agree that one of the Developer Preliminary Period Conditions is the 'Commencement of Early Works' as identified in Attachment 1 under the Early Works Licence by the Developer.
- (b) The Developer must obtain all relevant Approvals required for the performance of the Early Works.
- (c) Provided that the Developer has complied with clause 3.5(a), the Landowner must grant to the Developer an Early Works Licence in accordance with clause 30.2 for the performance of the Early Works.
- (d) Prior to commencing the Early Works, the Developer must provide to the Landowner reasonable details of the scope of the Early Works to be carried out by the Developer.

3.6 Extensions of time to Final Preliminary Period Conditions Deadline

- (a) If an extension of time to the Date for HA Conditions Satisfaction is granted by Housing Australia under the HAFFF Project Agreement, or if the Date for HA Conditions Satisfaction is otherwise varied by Housing Australia and the Recipient resulting in an extension to the Date for HA Conditions Satisfaction then the Final Preliminary Period Conditions Deadline is extended by the same period as the Date for HA Conditions Satisfaction is extended under the HAFFF Project Agreement.
- (b) Within 5 Business Days of the Date for HA Conditions Satisfaction being extended under the HAFFF Project Agreement, the Developer must give to the Landowner notice of the date to which the Date for HA Conditions Satisfaction is extended.
- (c) If the parties meet under clause 3.7(c), and the parties reach agreement pursuant to clause 3.7(c) on the extension of an Other Preliminary Period Conditions Deadline, the parties must also, at that same meeting:
 - (i) consider the impact of the extension of the Other Preliminary Period Conditions Deadline on the Final Preliminary Period Conditions Deadline; and
 - (ii) endeavour to reach agreement on whether the Final Preliminary Period Conditions Deadline should also be extended and, if so, by what period.
- (d) If the parties reach agreement pursuant to clause 3.6(c) on an extension to the Final Preliminary Period Conditions Deadline, then the Final Preliminary Period Conditions Deadline is extended in accordance with that agreement.
- (e) In addition to the rights in clause 3.6(a) to 3.6(d), the Developer is entitled to an extension of time to the Final Preliminary Period Conditions Deadline if the Developer is or is likely to be delayed in achieving the Developer Preliminary Period Conditions as a result of any of the following:
 - (i) a Force Majeure Event occurs;
 - (ii) any breach of this deed by the Landowner or the Landowner's Associates, or any wrongful or reckless act or omission by the Landowner or the Landowner's Associates;
 - (iii) any other cause agreed by the parties from time to time.

3.7 Extensions of time to Other Preliminary Period Conditions Deadlines

- (a) This clause applies to the **Other Preliminary Period Conditions Deadlines**, being the Preliminary Period Conditions Deadlines other than the Final Preliminary Period Conditions Deadline. In this clause, **Other Preliminary Period Conditions** are the Preliminary Period Conditions other than the Final Preliminary Period Condition.
- (b) If either party considers that it has been delayed in achieving an Other Preliminary Period Condition, it may give notice to the other party setting out the cause of and duration of the delay.
- (c) Within 5 Business Days after a party gives a notice to the other party under clause 3.7(b), the parties must meet and endeavour to reach agreement on whether the Other Preliminary Period Conditions Deadline for the relevant Other Preliminary Period Condition should be extended and, if so, by what period. If the parties reach agreement on an extension to the Other Preliminary Period Conditions Deadline for the relevant Other Preliminary Period Condition, then that Other Preliminary Period Conditions Deadline for the relevant Other Preliminary Period Condition is extended in accordance with that agreement, and the parties must also endeavour to reach agreement on whether the Final Preliminary Period Condition Deadline should also be extended having regard to any extension agreed for the Other Preliminary Period Condition Deadline.
- (d) Despite any other provision of this deed, the Other Preliminary Period Conditions Deadline must not be extended to be later than the Final Preliminary Period Conditions Deadline.
- (e) In addition to the rights in clauses 3.7(b) to 3.7(c), the Developer is entitled to an extension of time to any Other Preliminary Period Condition Deadline if the Developer is or is likely to be delayed in achieving the relevant Developer Preliminary Period Conditions as a result of any of the following:
 - (i) a Force Majeure Event occurs;
 - (ii) any breach of this deed by the Landowner or the Landowner's Associates, or any wrongful or reckless act or omission by the Landowner or the Landowner's Associates; and
 - (iii) any other cause agreed by the parties from time to time.

3.8 Extensions of time to Preliminary Period Condition Deadline - Commencement of Early Works

- (a) In addition to the rights in clauses 3.6 and 3.7, if an extension to the Date for Satisfaction is granted by Housing Australia under the HAFFF Project Agreement, or if the Date for Satisfaction is otherwise varied by Housing Australia and the recipient resulting in an extension to the Date for Satisfaction, then the Preliminary Period Conditions Deadline for the commencement of Early Works is extended by the same period as the Date for Satisfaction is extended under the HAFFF Project Agreement.
- (b) Within 5 Business Days of the extension of the Date for Satisfaction under the HAFFF Project Agreement, the Developer must give to the Landowner notice of the date to which the Date for Satisfaction is extended.
- (c) If:
 - (i) the recipient under the HAFFF Project Agreement is entitled to claim an extension of time to the Date for Satisfaction for the reasons outlined in clause 2.1(h) of the HAFFF Project Agreement; and

- (ii) the HAFFF Project Agreement has not been novated from the Landowner to the Developer,

then in satisfaction of clause 2.1(i) of the HAFFF Project Agreement, the Developer may submit a written request to the Landowner together with any information and confirmations as required under clause 2.1(i) of the HAFFF Project Agreement, requesting that the Landowner submit a claim to Housing Australia for the extension of the Date for Satisfaction. If the Landowner does not respond within 5 Business Days, the Landowner is deemed to have authorised the Developer to submit the claim for an extension to the Date for Satisfaction to Housing Australia. For avoidance of doubt, a submission of a written request to the Landowner under this clause 3.8(c) does not automatically extend the Preliminary Period Conditions Deadline for the commencement of Early Works.

3.9 Termination of deed at end of Preliminary Period

- (a) Part 3 of Attachment 1 sets out:
 - (i) the Preliminary Period Termination Triggers; and
 - (ii) in relation to each Preliminary Period Termination Trigger, the party which has a right to terminate this deed if the Preliminary Period Termination Trigger arises (**Relevant Party**).
- (b) Prior to the end of the Preliminary Period a Preliminary Period Termination Trigger has arisen and remains unremedied:
 - (i) the parties must endeavour to negotiate and agree the terms on which the Relevant Party would agree to waive its termination right in respect of the Preliminary Period Termination Trigger or otherwise resolve the issue;
 - (ii) if the Relevant Party has not agreed to waive its termination rights in respect of the Preliminary Period Termination Trigger pursuant to clause 3.9(b)(i), the Relevant Party may give notice to the other party that it intends to terminate this deed; and
 - (iii) if the Relevant Party has given notice to the other party under 3.9(b)(ii) and at least 48 hours (on Business Days) have elapsed since the giving of this notice, the Relevant Party may give a notice to the other party terminating this deed. For the avoidance of doubt, if a Preliminary Period Termination Trigger has arisen under clause 15.3(d), then this will be deemed to be the relevant Preliminary Period Termination Trigger for the purpose of that termination.
- (c) If:
 - (i) at the end of the Preliminary Period no Preliminary Period Termination Trigger has arisen; or
 - (ii) at the end of the Preliminary Period one or more Preliminary Period Termination Triggers have arisen but they are all agreed to be waived pursuant to clause 3.9(b)(i),then:
 - (iii) all risk and responsibility in respect of the Project passes to the Developer subject to the terms of this deed; and

- (iv) no further adjustments are to be made to the Landowner Capital Advance for any fact, matter, circumstance or thing which arises or occurs after the expiration of the Preliminary Period.
- (d) If this deed is terminated pursuant to clause 3.9(b)(iii), this deed will be of no force and effect and no party will have any liabilities to or against the other except in regard to antecedent breach.

3.10 Payment by Landowner of Reimbursable Development Costs

If this deed is terminated pursuant to:

- (a) clause 3.9(b)(iii) because (at the end of the Preliminary Period):
 - (i) one or more of the Landowner Preliminary Period Conditions have not been satisfied by the Landowner or waived by the Developer; or
 - (ii) the relevant Preliminary Period Termination Trigger is pursuant to clause 15.3(d);

then the Landowner must pay to the Developer:

- (b) the Reimbursable Development Costs properly and reasonably incurred by the Developer prior to the date of termination up to a maximum amount of [REDACTED]; and
- (c) the General Contingency Amount properly and reasonably incurred by the Developer prior to the date of termination, subject to the Landowner's prior approval (acting reasonably) of the relevant amounts claimed as part of the General Contingency Amount at a meeting of the PCG (such approval not to be unreasonably withheld provided that the relevant amounts are paid for works or services which are reasonably required to obtain a Construction Certificate and/or to progress any Modifications for the Project) and provided that in no circumstances is the Landowner required to pay to the Developer more than [REDACTED] in respect of the General Contingency Amount),

and the process in clause 14.2 will apply to the Developer's claim for the payment of the capped Reimbursable Development Costs or the General Contingency Amount, as if it were a drawdown claim (notwithstanding that the Landowner is not otherwise required to pay the Landowner Capital Advance).

3.11 Inability to provide parent company guarantee

If this deed is terminated under clause 3.9(b)(iii) due to the Developer's failure to satisfy the 'Finance' Preliminary Period Condition identified in Attachment 1, and the sole reason for such termination is that the financier requires a parent company guarantee which the Developer cannot procure, the Landowner may elect to (but is under no obligation to) pay the Developer the Reimbursable Development Cost and General Contingency Amount in accordance with clause 3.10(b) and (c). The Developer acknowledges that the Landowner is under no obligation to make such payment.

3.12 Outgoings and other liabilities

Unless this deed is terminated pursuant to clause 3.9(b)(iii), on and from the date the last of the Preliminary Period Conditions are satisfied or waived, the Developer must pay:

- (a) all Outgoings whether imposed on the Landowner, the Developer, the Property or the Works; and

- (b) all other Costs in relation to the Project, including the Cost of securing and fencing the Property and repairing and maintaining all improvements on the Property (but excluding the Landowner Social Housing Dwellings from the date of commencement of the Lease under the CHP Management Agreement).

4. Minimum Requirements

4.1 Minimum Requirements

The Developer must by the Sunset Date:

- (a) complete and deliver the number of Social Housing Dwellings that are permitted to be developed pursuant to the Agreed Development Consent, such Social Housing Dwellings having the tenure mix, mix of unit sizes and average unit size provided for in the Agreed Development Consent;
- (b) construct and deliver all Social Housing Dwellings under this deed:
 - (i) to meet at a minimum the requirements of Item 16;
 - (ii) so that such Social Housing Dwellings are tenure blind and are separately connected and metered for all utilities;
- (c) ensure that all of the Landowner Social Housing Dwellings are contained in a single freehold or stratum lot; and
- (d) ensure that secure, permanent and enforceable access is available to all Public Areas and Shared Facilities comprised in the Works for all residents of the Property via the registration of easements or other agreed dealings at NSW LRS by the Date of Practical Completion.

(the **Minimum Requirements**).

4.2 Essential Term

The parties acknowledge and agree that this clause 4 is an essential term of this deed.

5. Not Used

6. Agreed Development Consent

6.1 Landowner to use reasonable endeavours to obtain

- (a) The Landowner must:
 - (i) on or before 30 September 2025 (unless otherwise agreed in writing by the parties), apply for; and
 - (ii) use reasonable endeavours to obtain,a Development Consent which is capable of being an Agreed Development Consent.
- (b) The Landowner must promptly prepare or procure the preparation of the application and Supporting Documents required for the Development Consent referred to in clause 6.1(a).

6.2 Landowner to keep Developer informed of progress

The Landowner must, at the request of the Developer (acting reasonably) inform the Developer via the PCG of the progress of the application for Development Consent, including any correspondence with and requests for further information from the Consent Authority.

6.3 Unacceptable Conditions

- (a) Within 20 Business Days of the grant of the Development Consent, the Landowner must:
 - (i) provide a copy of the Development Consent to the Developer; and
 - (ii) notify the Developer whether or not in the Landowner's opinion, any conditions in the Development Consent constitute Unacceptable Conditions (providing reasonable details to support the Landowner's conclusion having regard to the matters to be taken into account in determining whether a condition is an Unacceptable Condition).
- (b) Within 20 Business Days of the date the Landowner provides the Developer with a copy of the Development Consent pursuant to clause 6.3(a), the Developer must notify the Landowner whether or not in the Developer's opinion (acting reasonably), any conditions in the Development Consent constitute Unacceptable Conditions (providing reasonable details to support the Developer's conclusion having regard to the matters to be taken into account in determining whether a condition is an Unacceptable Condition).
- (c) If:
 - (i) the Landowner gives a notice under clause 6.3(a) that any conditions in the Development Consent constitute Unacceptable Conditions; or
 - (ii) the Developer gives a notice under clause 6.3(b) that any conditions in the Development Consent constitute Unacceptable Conditions,the parties must use reasonable endeavours to reach an agreement as to:
 - (iii) whether any conditions of the Development Consent constitute Unacceptable Conditions; and
 - (iv) if the parties agree (or it is determined pursuant to dispute determination as referred to in clause 6.3(d)) that one or more conditions of the Development Consent constitute Unacceptable Conditions: what steps can be taken to address those Unacceptable Conditions in order to implement the Project despite those Unacceptable Conditions, including without limitation, the parties agreeing in writing to adjust:
 - A. the minimum number of Landowner Social Housing Dwellings and the minimum number of Developer Social Housing Dwellings as specified in Item 15 of the Reference Schedule; and/or
 - B. the mix of unit sizes and average unit size as specified in Item 15 of the Reference Schedule,such that the adjusted numbers of dwellings and mix of unit sizes conforms with the Development Consent.

- (d) If clause 6.3(c) applies but the parties are in dispute as to whether one or more conditions of the Development Consent constitutes an Unacceptable Condition, either party may refer the dispute for determination in accordance with clause 35.
- (e) If:
 - (i) the parties agree (or it is determined pursuant to dispute determination as referred to in clause 6.3(d)) that one or more conditions of the Development Consent constitute Unacceptable Conditions; and
 - (ii) the parties are not able to agree by the relevant Preliminary Period Conditions Deadline what steps can be taken to address those Unacceptable Conditions in order to implement the Project despite those Unacceptable Conditions,then no Agreed Development Consent has been obtained for the purpose of this deed.

6.4 Agreed Development Consent

If the effect of the notices under clause 6.3 is that there are no unresolved Unacceptable Conditions, then the Development Consent is an Agreed Development Consent for the purpose of this deed and the Concept Design Documents are varied to reflect any changes made as a result of the Development Consent that is an Agreed Development Consent.

6.5 Effect of Unacceptable Conditions

If the parties agree (or it is determined pursuant to dispute determination as referred to in clause 6.3(d)) that one or more conditions of the Development Consent constitute Unacceptable Conditions and the parties have not resolved the Unacceptable Condition in accordance with clause 6.3, the Landowner may (in its discretion):

- (a) commence a court appeal; and/or
- (b) lodge an application for a Modification,

with a view to procuring a Development Consent with the Unacceptable Conditions removed or modified such that the Development Consent no longer has an Unacceptable Condition.

6.6 Not used

7. Approved Design Documents

7.1 Design Documentation

- (a) The Developer must ensure the Works are designed with the skill, care and diligence expected of a designer experienced in projects of a similar nature to the Development.
- (b) The design of the Works and the Development must be developed by the Developer to ensure that the Design Documentation:
 - (i) meets or exceeds Good Industry Practice;
 - (ii) has been and will be prepared by consultants with appropriate resources, expertise and experience necessary to design the Works in accordance with the requirements of this deed;
 - (iii) complies with or is consistent with:

- A. the Concept Design Documents;
 - B. the Agreed Development Consent;
 - C. the Project Objectives;
 - D. the HAFFF Project Agreement (including without limitation the D&C Approach (as defined in the HAFFF Project Agreement); and
 - E. this deed;
- (iv) specifies the external design, appearance, material, layout plan or finishes of any building to be constructed in respect of the Works;
 - (v) if complied with in the carrying out of the Works, will result in the Development being constructed, and once completed will deliver, satisfy, meet or exceed the specifications, requirements, and outcomes committed in this deed and the HAFFF Project Agreement; and
 - (vi) for the Social Housing Dwellings, meets or exceeds the requirements within the NSW Government Apartment Design Guide and the LHA Gold Level standard of the Design Guidelines published by Livable Housing Australia.
- (c) In addition to seeking the Landowner's consent to consolidated sets of Design Documentation at the Design Documentation Review Stages under clause 7.2, the Developer must:
 - (i) keep the Landowner informed of the progress of the Design Documentation by providing regular updates to the Landowner via the PCG meetings; and
 - (ii) prior to each PCG meeting (as part of the agenda for the relevant PCG meeting) provide to the Landowner a change register identifying any departures in the Design Documentation (as it is being progressed) from the Concept Design Documents (each such departure being a Material Change).
 - (d) The Landowner may, within 10 Business Days after the relevant PCG meeting, notify the Developer that the Landowner does not approve one or more of the Material Changes identified in the agenda for the relevant PCG meeting if the Material Change(s) give rise to (or would if implemented give rise to) a Landowner Rejection Right, and the Landowner must also notify the Developer of the reasons for withholding approval to the relevant Material Change by specifying the particular Landowner Rejection Right upon which the withholding of approval is based. If the Landowner gives notice to the Developer pursuant to this clause 7.1(d), the Developer must amend the Design Documentation to ensure that it no longer gives rise to the Landowner Rejection Right notified by the Landowner to the Developer.

7.2 Landowner consent – Design Documentation

- (a) At each of the Design Documentation Review Stages, the Developer must submit to the Landowner for approval:
 - (i) a consolidated set of the latest version of the Design Documentation; and
 - (ii) a change register identifying any departures in the Design Documentation from the Concept Design Documents.

- (b) The Developer must promptly submit any other further information or documentation reasonably requested by Landowner required for Landowner to approve the Design Documentation.
- (c) In considering the Design Documentation, the Landowner must act reasonably, including by limiting the number of times it requests further information, and the Landowner:
 - (i) must consent to the Design Documentation provided to it by the Developer under this clause 7.2 if the Design Documentation:
 - A. meets the requirements of clause 7.1(b); and
 - B. is not the subject of a Landowner Rejection Right; but
 - (ii) may withhold consent or give consent subject to conditions that enable the Design Documentation to meet the requirements of clause 7.1(b) or that address the relevant Landowner Rejection Right (as applicable) at its absolute discretion in relation to any Design Documentation that:
 - A. does not meet the requirements of clause 7.1(b); or
 - B. is otherwise the subject of a Landowner Rejection Right.
- (d) The Landowner must notify the Developer of whether it approves or refuses to approve the proposed Design Documentation, and, if it refuses, the reasons for its refusal to approve the proposed Design Documentation (including, if relevant the particular Landowner Rejection Right upon which the refusal is based), within 15 Business Days after the Landowner receives the relevant Design Documentation under clause 7.2(a) (**Design Documentation Consent Period**).
- (e) If, at any time during the Design Documentation Consent Period, the Landowner requests (acting reasonably) any further information or documentation from the Developer, the Design Documentation Consent Period will pause and will resume once Landowner has received the required information or documentation.
- (f) If the Landowner does not notify the Developer that it consents or refuses its consent within the times specified in this clause then the Landowner is deemed not to have given its consent to the Design Documentation.

7.3 Landowner consultation – Modifications to Agreed Development Consent

- (a) The Developer must consult with the Landowner before applying for any Modification in respect of the Agreed Development Consent.
- (b) The Developer must not amend the Agreed Development Consent in any way (or apply for a replacement Approval) which would have the result that the Works (if carried out in accordance with the amended or replacement Approval) would give rise to a Landowner Rejection Right.
- (c) The provisions of clauses 8, 9 and 10 apply to any application by the Developer to amend the Agreed Development Consent.

7.4 Copies of Final Design Documentation

- (a) The Developer must give the Landowner:
 - (i) a consolidated set of the Final Design Documentation promptly after the Developer receives any Construction Certificate for the Works or, if no

Construction Certificate is required by Law, prior to commencement of construction of the Works; and

- (ii) written details of any changes to the Final Design Documentation (including copies of the changed plans and specifications), promptly after the Developer receives any other Approval and which have been consented to by the Landowner in accordance with clauses 8 and 9.
- (b) The Developer may not make any changes to the Final Design Documentation without the Landowner's consent and the provisions of clause 7.2 will apply to the Developer's obligation to obtain the Landowner's consent to those changes (with the necessary changes being made).

8. Preparation of Applications

8.1 Developer to prepare Applications

The Developer must promptly and at its Cost prepare or procure the preparation of all Applications for the Development which are required other than the Agreed Development Consent.

8.2 Requirements for Proposed Applications

The Developer must ensure that any Application that the Developer intends to lodge or lodges with the Consent Authority for Approval which is required (other than the Agreed Development Consent):

- (a) is developed to a level necessary to support an Application for the relevant Approval;
- (b) meets Good Industry Practice;
- (c) seeks Approval for the Development including the carrying out of the Works;
- (d) will, if approved, allow or provide for the Works to deliver, satisfy, meet or exceed all the specifications, requirements and outcomes committed to in:
 - (i) the requirements of this deed;
 - (ii) the Agreed Development Consent;
 - (iii) the Guidelines; and
 - (iv) the Social Housing Product Requirements and Finishes;
- (e) complies with all Laws and is capable of approval under the then currently applicable Laws;
- (f) ensures the completed Works are suitable for the Intended Purpose; and
- (g) contains a notification of an intention to strata or stratum subdivide the Property.

9. Landowner's consent to Applications

9.1 Applications must be lodged with the Landowner

- (a) The Developer must not lodge, make or otherwise submit an Application for Approval to a relevant Authority where that Approval requires landowner consent

unless the Landowner has consented to the lodgement of that Application in accordance with this clause 9.

- (b) The Developer must, in the identical form it proposes to lodge with the Consent Authority, submit to the Landowner any proposed Application.
- (c) The Developer must promptly submit any other further information or documentation requested by the Landowner.
- (d) The Developer must keep the Landowner informed periodically regarding the likely timing of intended lodgment of all Applications with the Consent Authority.

9.2 Non-conforming Applications

When submitting the proposed Application to the Landowner for consent under clause 9.1, the Developer must:

- (a) disclose to the Landowner each aspect of the Application submitted for consent that is not in conformity with the relevant requirements of any clause of this deed or any relevant requirement of the Landowner or any Authority; and
- (b) give to the Landowner a warranty by the Developer that any Design Documentation shown or described in the Application has been prepared in accordance with and meets the requirements of clause 8.2 (except to the extent disclosed in clause 9.2(a)).

9.3 Timing for Landowner consent and conditional consents

- (a) The consent of the Landowner to an Application under clause 9.1, must be given or refused within 15 Business Days of the relevant Application and all Supporting Documents being submitted to the Landowner for consent.
- (b) If, at any time during the 15 Business Day period referred to in clause 9.3(a), the Landowner seeks (acting reasonably) any other further information or documentation from the Developer to consider, the 15 Business Day period will pause and will only resume once the Landowner has received the required information or documentation.
- (c) If the Landowner does not notify the Developer that it consents or refuses its consent within the times specified in this clause then the Landowner is deemed not to have given its consent to the Application.

9.4 Landowner's consent

The Landowner:

- (a) can:
 - (i) give the Landowner's consent to the Application with or without conditions;
 - (ii) withhold giving the Landowner's consent to the Application; or
 - (iii) reject the Application; and
- (b) must act reasonably in considering the Application except in the circumstances referred to in clause 9.5.

9.5 Withholding consents to Applications

The Landowner can withhold its consent to the lodgment of a proposed Application in its absolute discretion where the Application does not satisfy the requirements of clause 8.2 or where the Application (if approved and implemented) would give rise to a Landowner Rejection Right.

9.6 Consequences of withholding consent to proposed Application

- (a) If the Landowner withholds its consent to any proposed Application, it will promptly notify the Developer of its reasons.
- (b) On receipt by the Developer of any notice referred to in clause 9.6(a) the Developer must as soon as practicable, amend the proposed Application taking the Landowner's reasons into account, and resubmit the amended proposed Application to the Landowner for its consent. Clauses 9.1 to 9.6 (inclusive) apply to the amended proposed Application. The Developer must continue this process until it receives consent from the Landowner to lodge the Application.

9.7 Landowner's review of Applications and Design Documentation

- (a) The Landowner (or any person on its behalf) does not assume or owe any duty of care or other responsibility or obligation to the Developer in relation to any Application, Approval, Design Documentation or the Supporting Documents and will not be required to check such Application, Approval, Design Documentation or Supporting Documents for suitability, errors, omissions or compliance with the requirements of Law, any Authority or this deed.
- (b) The Developer will not be entitled to make any Claim arising out of or in connection with any failure by the Landowner (or any person on its behalf) to detect or notify the Developer of any lack of suitability, errors, omissions or non-compliance with the requirements of Law, any Authority or this deed, by the Application, the Approval or the Design Documentation including the Supporting Documents.
- (c) No review of, comment upon, consent to, or approval or rejection of, nor failure or refusal to review, comment upon, consent to, or approve or reject, any Application or Approval or any other direction (including approval) by the Landowner (or any person on its behalf) about such Application or Approval, Design Documentation or Supporting Documents will:
 - (i) relieve the Developer from, or otherwise limit, alter or affect, the Developer's liabilities or responsibilities under this deed, the relevant Contract or otherwise at Law; or
 - (ii) prejudice the Landowner's rights against the Developer whether under this deed or otherwise at Law.

10. Lodgement and progressing Approvals

10.1 Assistance by the Landowner

Subject to the Developer complying with the provisions of clause 8 and clause 9, the Landowner agrees to sign all documents and promptly provide all authorisations, consents, disclosures, declarations and approvals as may be reasonably required (in its capacity as landowner) to enable the Developer to lodge any Application approved by the Landowner with a Consent Authority for the purposes of the Development.

10.2 Landowner to be kept informed of the progress

The Developer must:

- (a) inform the Landowner of the progress of all Applications; and
- (b) keep the Landowner informed of, the anticipated timing of the Applications required to be made to the relevant Consent Authority.

10.3 Copies of Applications, Approvals and associated documents

Without limiting the Developer's obligations elsewhere in this deed, the Developer must promptly give the Landowner a copy of:

- (a) each Application as lodged with any Consent Authority;
- (b) each environmental assessment or revised environmental assessment the Developer proposes to submit;
- (c) all material correspondence between the Developer (or any person on behalf of the Developer) and any Consent Authority in connection with any Application, proposed Application, Approval or proposed or draft determination of any Application;
- (d) all written submissions received or made in relation to any Application;
- (e) details of any material change, modification or condition of which the Developer becomes aware, which the Consent Authority may consider; and
- (f) all Approvals received and notices gazetted in relation to any Application.

10.4 Obtaining other Approvals

- (a) The Developer must:
 - (i) promptly obtain all other Approvals required for the Development (other than the Agreed Development Consent); and
 - (ii) must ensure that the Approvals referred to in clause 10.4(a)(i) are consistent with the requirements of clause 8.2 and the Agreed Development Consent.
- (b) The Developer acknowledges and agrees that it bears the risk of any delay in obtaining Approvals to the extent that the delay is caused or contributed to by the Developer's non-compliance with clause 10.4(a) or because the Developer has made any modifications to the Agreed Development Consent.

10.5 Developer to provide Approvals to Landowner

- (a) If an Approval does not differ from the relevant application previously consented to by the Landowner under clause 9, the Developer must promptly provide to the Landowner a copy of each Approval obtained by the Developer.
- (b) If an Approval differs from the relevant application previously consented to by the Landowner under clause 9 (including, for example, if there are any modifications made during the assessment process that were not previously disclosed to and approved by the Landowner), the Developer must promptly provide to the Landowner a copy of each Approval obtained by the Developer for the Landowner's review and approval (but only in respect of each Approval where the Landowner's consent is required to apply for that Approval (each being a **Relevant Approval**)).

- (c) The consent of the Landowner to a Relevant Approval under clause 10.5(b), must be given or refused within 15 Business Days of the relevant Approval being submitted to the Landowner for consent and clauses 9.3 and 9.4 apply to the consent to the Relevant Approval as if it were the Application the subject of the Relevant Approval but subject to this clause 10.5.
- (d) If the Landowner does not notify the Developer that it consents or refuses its consent within the times specified in this clause then the Landowner is deemed not to have given its consent to the Relevant Approval.

10.6 Consequences of withholding consent to Relevant Approval

- (a) If the Landowner withholds its consent to any Relevant Approval, it will promptly notify the Developer of its reasons.
- (b) On receipt by the Developer of any notice referred to in clause 10.6(a) the Developer must as soon as practicable, seek an amendment to the terms of the Relevant Approval taking the Landowner's reasons into account, and resubmit the amended Relevant Approval to the Landowner for its consent. The Developer must continue this process until it receives consent from the Landowner to the relevant Relevant Approval.

11. Variations

11.1 Developer Variations

- (a) The Developer may at any time before the Date of Practical Completion request approval at the PCG for any Developer Variations to the Works provided that:
 - (i) the Developer Variation will not have an adverse effect on the Works; and
 - (ii) the Developer Variation is consistent with Agreed Development Consent, the Minimum Requirements and the Project Objectives; and
 - (iii) the Developer has obtained the consent of Housing Australia to the Developer Variation, if such consent is required under the HAFFF Project Agreement.
- (b) If the Developer wishes to propose a Developer Variation to the Works under this clause 11.1 the Developer must submit a notice to the Landowner attaching:
 - (i) the details of the Developer Variation requested (including, if relevant, the proposed drawings and specifications identifying the Developer Variation requested);
 - (ii) reasons for the Developer Variation; and
 - (iii) written confirmation (together with appropriate substantiating information):
 - A. that each of the requirements under clause 11.1(a) will be satisfied by the proposed Developer Variation; and
 - B. whether or not the Developer Variation will give rise to a Landowner Rejection Right.
- (c) In considering a Developer Variation, the Landowner must act reasonably, and the Landowner:

- (i) must consent to a Developer Variation provided to it by the Developer under this clause 11.1, if the Developer Variation:
 - A. meets the requirements of clause 11.1(a); and
 - B. is not the subject of a Landowner Rejection Right; but
 - (ii) may withhold consent, or give consent subject to conditions that enable the Developer Variation to meet the requirements of clause 11.1(a) or that address the relevant Landowner Rejection Right (as applicable) at its absolute discretion in relation to any Developer Variation that:
 - A. does not meet the requirements of clause 11.1(a); or
 - B. is otherwise the subject of a Landowner Rejection Right.
- (d) The Landowner must notify the Developer of whether it approves or refuses to approve the proposed Developer Variation, and, if it refuses, the reasons for its refusal to approve the proposed Developer Variation (including, if relevant the particular the Landowner Rejection Right upon which the refusal is based), within 20 Business Days after the Landowner receives notice of the relevant Developer Variation under clause 11.1(b).
- (e) If the Landowner does not notify the Developer that it gives or refuses its consent within the times specified in clause 11.1(d) then the Landowner is deemed to have rejected the proposed Developer Variation.
- (f) If the Landowner serves a notice rejecting the Developer Variation in accordance with clause 11.1(d) (or is deemed to have done so under clause 11.1(e)), the Landowner must meet the Developer within 10 Business Days after request from the Developer to discuss how the Developer Variation may be implemented.
- (g) If the parties are unable to agree how the Developer Variation may be implemented at the meeting referred to in clause 11.1(f), the parties will be in dispute for the purposes of clause 35.
- (h) If the Landowner approves the Developer Variation, the Developer may:
 - (i) implement the Developer Variation in the execution of the Works; and
 - (ii) update the Final Design Documentation to reflect the approved Developer Variation and the amended Final Design Documentation shall replace any previous Final Design Documentation.
- (i) The Developer is not entitled to any extension of time to a Milestone Date or any other date as a consequence of a Developer Variation proposed by the Developer unless otherwise expressly agreed in writing.

11.2 Landowner Variations

- (a) The Landowner may, at the Landowner's Cost, at any time before Practical Completion request approval of the Developer for any Landowner Variations to the Social Housing Works and/or Shared Services Works where:
 - (i) the Landowner Variation will not result in any delays to Practical Completion;
 - (ii) the Landowner Variation will not have an adverse effect on the workmanship or durability of fixtures, fittings or an item of plant or equipment; and

- (iii) the Landowner Variation is consistent with the Final Design Documentation and Agreed Development Consent.
- (b) If the Landowner wishes to propose a Landowner Variation to the Social Housing Works and/or Shared Services Works under this clause 11.2 the Landowner must submit a notice to the Developer attaching:
 - (i) the details of the Landowner Variation required (including, if relevant, the proposed drawings and specifications identifying the Landowner Variation requested);
 - (ii) reasons for the Landowner Variation; and
 - (iii) confirmation (together with appropriate substantiating information) that each of the requirements under clause 11.2(a) will be satisfied by the proposed the Landowner Variation.
- (c) In considering a Landowner Variation, the Developer:
 - (i) must act reasonably; and
 - (ii) must consent to the Landowner Variation if the Landowner Variation meets the requirements of clause 11.2(a); but
 - (iii) may withhold consent, or give consent subject to conditions at its absolute discretion in relation to any Landowner Variation that:
 - A. does not meet the requirements of clause 11.2(a);
 - B. is otherwise the subject of a Developer Rejection Right; or
 - C. requires the consent of Housing Australia and the Developer is not able to obtain Housing Australia's consent despite using reasonable endeavours to do so.
- (d) The Developer must notify the Landowner of whether it approves or refuses to approve the proposed Landowner Variation, and, if it refuses, the reasons for its refusal to approve the proposed the Landowner Variation (including, if relevant, the provision or provisions of the particular Developer Rejection Right upon which the refusal is based), within 15 Business Days after the Landowner's notice requesting the Landowner Variation.
- (e) If the Developer does not notify the Landowner that it gives or refuses its consent within the times specified in clause 11.2(d) then the Developer is deemed to have approved the proposed the Landowner Variation.
- (f) If the Developer serves a notice rejecting the Landowner Variation in accordance with clause 11.2(b), the Developer must meet the Landowner, if requested to do so, to discuss how the Landowner Variation may be implemented.
- (g) If the Developer approves the Landowner Variation then, subject to the Landowner approving and paying the Cost of the Landowner Variation in accordance with clause 11.3, the Developer must:
 - (i) implement the Landowner Variation in the execution of the Works; and
 - (ii) update the Final Design Documentation to reflect the approved Landowner Variation and the amended Final Design Documentation shall replace any previous Final Design Documentation.

11.3 Landowner Variation Costs

- (a) The Landowner must pay the Landowner Variation Costs for any Landowner Variation approved by the Developer under clause 11.2 to the extent the Landowner Variation results in the Developer incurring additional Costs in respect of the Works.
- (b) Within 10 Business Days after the Developer approves or is deemed to have approved the Landowner Variation under clause 11.2, the Developer must procure from the Builder and give to the Landowner a costed order for the Landowner Variation Costs relating to the Landowner Variation.
- (c) The costed order for the Landowner Variation Costs given to the Landowner under clause 11.3(b) must:
 - (i) be a reasonable amount taking in to account the cost of delays including the Builder and other consequential Costs for the Developer;
 - (ii) include adequate details and supporting documentation, to the reasonable satisfaction of the Landowner, to enable the Landowner to independently verify the costed order and the reasonableness of the amount of the costed order; and
 - (iii) not include any profit margin on the part of the Developer.
- (d) The Landowner must confirm whether it approves or disputes the costed order for the Landowner Variation Costs within 10 Business Days of receiving the costed order for the Landowner Variation Costs under clause 11.3(b). As an alternative to approving or disputing the costed order for the Landowner Variation Costs, the Landowner may notify the Developer within that 10 Business Day period that it withdraws the request for the Landowner Variation.
- (e) If the Landowner disputes the costed order for the Landowner Variation Costs, the parties will be in dispute for the purposes of clause 35.
- (f) Within 10 Business Days after any dispute referred to in clause 11.3(e) is determined, the Landowner may notify the Developer that it withdraws the request for the Landowner Variation.

12. Builder and Building Contract

12.1 Appointment of Builder

- (a) The Developer must appoint a Builder to deliver the Works and must enter into a Building Contract with a Builder by no later than the relevant Preliminary Period Conditions Deadline. The Developer must ensure that the brief to the Builder is in accordance with the Concept Design Documents (or, if already approved by the Landowner, the Final Design Documentation), (if already obtained) the Agreed Development Consent, the Minimum Requirements and the Project Objectives.
- (b) The Developer must conduct an open market tender process to procure and select the Builder which it wishes to appoint for the Project or otherwise satisfy the Landowner that the Developer has achieved value for money in its procurement of the Builder.
- (c) The Landowner acknowledges that:
 - (i) the Developer has, as at the date of this deed, engaged an early contractor involvement contractor (**ECI Contractor**) to progress the Project who the Developer intends to appoint as the Builder; and

- (ii) provided the ECI Contractor and the Contract otherwise satisfy the requirements of this clause 12, by appointing the ECI Contractor as the Builder, the Developer has achieved value for money in its procurement of the Builder for the purpose of clause 12.1(b).
- (d) The Developer must not appoint any person as a Builder without the prior approval of the Landowner. When submitting a request for the Landowner's consent to a Builder, the Developer must provide to the Landowner:
 - (i) evidence that:
 - A. the Builder nominated by the Developer for the Landowner's approval has the capacity, financial resources, solvency, experience and expertise to comply with all the Developer's obligations under this deed in relation to the carrying out of the Works;
 - B. the Developer has satisfied itself that the Builder has a suitable quality and safety record that will not expose the Landowner to risks for breach of any statutory obligations and warranties, including those under the Home Building Act;
 - C. where the WHS Accreditation Scheme applies and the Builder is required to be accredited under the WHS Accreditation Scheme for the purposes of the Works, the Builder is so accredited; and
 - D. the Developer holds sufficient and appropriate security from the Builder which can be unconditionally called upon to remedy or compensate for any defaults under the Building Contract; and
 - (ii) any other information regarding the Builder requested by the Landowner.
- (e) The Developer:
 - (i) warrants, as at the date of the Builder's appointment, that the Builder will be a person that the Developer is satisfied, after due enquiry, has the operational and financial capability and capacity, experience and expertise to comply with the Developer's obligations under this deed in relation to carrying out the Works; and
 - (ii) must ensure that, where the WHS Accreditation Scheme applies and the Builder is required to be accredited under the WHS Accreditation Scheme for the purposes of the Works, the Builder is so accredited.
- (f) The Developer must ensure that, to the best of its knowledge, it does not engage as the Builder a person who has any pending or actual disciplinary action taken or likely to be taken against them.

12.2 Building Contract

- (a) Before entering into a Building Contract, the Developer must:
 - (i) give to the Landowner:
 - A. a fully completed copy of the proposed Building Contract;
 - B. a Building Contract Notice; and

- C. a report by the Developer detailing the process completed by the Developer and the basis/criteria on which the proposed Builder has been selected; and
 - (ii) obtain the Landowner's consent to the Building Contract.
- (b) A Building Contract Notice must specify the Building Contract Price proposed by the Builder and must contain a warranty by the Developer to the Landowner that (and the Developer must ensure that):
 - (i) the Building Contract includes provisions:
 - A. requiring the Builder to comply with the Guidelines in relation to carrying out the Works (to the extent that those Guidelines are relevant to the Builder and the Works it is performing);
 - B. which will enable the Developer to discharge the Developer's obligations and liabilities under this deed in respect of the Works;
 - C. requiring that any work performed by the Builder complies with this deed;
 - D. which precludes the Builder from assigning the Building Contract or any payment, right, benefit or interest under it without the consent of the Landowner;
 - E. requiring the Builder to ensure that it maintains accreditation under the WHS Accreditation Scheme while carrying out the Works and to comply with all conditions of the WHS Accreditation Scheme whilst carrying out the Works; and
 - F. which reflect the reasonable requirements of the Landowner in relation to insurances to be effected by the Builder, security to be provided by the Builder and obligations in relation to modern slavery;
 - (ii) the lump sum price proposed by the Builder includes the Certified Estimates approved by the Landowner under clause 3.4 or otherwise determined in accordance with clause 35; and
 - (iii) the Developer has complied with the requirements of this deed in relation to the Builder and the Building Contract.

The Building Contract Notice must contain evidence of the current accreditation of the Builder under the WHS Accreditation Scheme for the purposes of the Project (if the WHS Accreditation Scheme applies).

- (c) After the Building Contract is approved by the Landowner, the Developer must promptly provide to the Landowner a complete and fully executed copy of the Building Contract.
- (d) The Landowner, the Developer and the Builder must enter into a Builder's Side Deed in respect of each Building Contract at the same time as the Building Contract is entered into. The Landowner and the Developer must act reasonably in negotiating any changes to the terms of the agreed form of the Builder's Side Deed.

12.3 Approval of Builder and Building Contract

- (a) Within 10 Business Days of receiving a request for consent under clause 12.1 or 12.2, the Landowner may request additional information to assist the Landowner in reviewing the suitability of the proposed Builder and/or the proposed Building Contract.
- (b) Provided that the Developer provides (as applicable):
 - (i) in respect of a Builder, the information required under clause 12.1(d); or
 - (ii) in respect of the Building Contract, a copy of the proposed Building Contract and the Building Contract Notice to the Landowner in accordance with clause 12.2(a)(i),

and any additional information requested under clause 12.3(a), the Landowner will not unreasonably withhold or delay its consent to the Developer appointing the Builder or entering into the proposed Building Contract (as applicable) and the Landowner must give the Developer a notice that consent is given or not given within 15 Business Days of receiving the information required under clause 12.1(d) or clause 12.2(a)(i), as applicable.

13. Financing documents

13.1 HAFFF Project Agreement and HAFFF Funding Agreement

- (a) The Landowner has entered into the HAFFF Project Agreement and HAFFF Funding Agreement with Housing Australia in respect of an Availability Payment, Concessional Loan and Grant (as defined in the HAFFF Project Agreement) as part of funding for the Project.
- (b) The Developer must by the relevant Preliminary Period Conditions Deadline:
 - (i) complete and submit the Application (as defined under the HAFFF Project Agreement) to Housing Australia; and
 - (ii) procure the novation of the HAFFF Project Agreement from the Landowner to the Developer.
- (c) The Landowner must consent to and execute the Application (as defined under the HAFFF Project Agreement) to be submitted by the Developer under clause 13.1(b)(i) by the relevant Preliminary Period Conditions Deadline.
- (d) The Landowner's entry into a novation deed (on terms satisfactory to Housing Australia) is subject to:
 - (i) the Developer satisfying the Preliminary Period Condition for the completion and submission of the Application (as defined under the HAFFF Project Agreement); and
 - (ii) Housing Australia providing its approval to the Application (as defined under the HAFFF Project Agreement) as submitted by the Developer under clause 13.1(b)(i).
- (e) In satisfying the relevant Preliminary Period Condition Deadline under clause 13.1(b)(i), the Developer must without limitation and subject to Housing Australia's further requirements:

- (i) be an Eligible Entity capable of meeting Housing Australia's requirements under the HAFFF Project Agreement and HAFFF Funding Agreement;
 - (ii) do all things reasonable to assist the Landowner in novating the HAFFF Project Agreement which includes without limitation, entering into relevant documentation, completion and execution of applications, forms and provision of information as required by Housing Australia;
 - (iii) make an Application (as defined under the HAFFF Project Agreement) to Housing Australia for the funding for the Project (with the consent of the Landowner) in the manner and form acceptable to Housing Australia;
 - (iv) enter into a novation deed or a separate agreement (on terms satisfactory to Housing Australia) containing any on-going obligations of the Landowner in respect of the Project, if required by Housing Australia;
 - (v) accept a full novation of the Funding Documents (with the exception of the HAFFF Funding Agreement);
 - (vi) must either:
 - A. accept a full novation of the HAFFF Funding Agreement without amendments and on the terms of a novation deed (on terms satisfactory to Housing Australia); or
 - B. enter into a deed with Housing Australia having a similar effect as the HAFFF Funding Agreement (on terms satisfactory to Housing Australia); and
 - (vii) progress the Project in a manner and to a standard which will satisfy the obligation of the Developer (as recipient) under the HAFFF Project Agreement.
- (f) In the event that this deed terminated after the HAFFF Project Agreement is novated to the Developer, the Developer must novate the HAFFF Project Agreement back to the Landowner in accordance with Housing Australia's requirements. This clause 13.1(f) survives the termination of this deed.

13.2 Financing documents

- (a) If the Developer requires funding from a Financier (including Housing Australia) to fund the Project, the Developer must:
- (i) first obtain the consent of the Landowner to the Financier, which consent must not be unreasonably withheld; and
 - (ii) first obtain the Landowner's consent to the terms of the financing that the Developer enters into with a Financier, which consent must not be unreasonably withheld,
- provided that, the Developer is not required to seek the consent under clause 13.2(a) to receiving funding from Housing Australia pursuant to the HAFFF Funding Agreement.
- (b) The Landowner agrees to enter into:
- (i) a Financier's Side Deed in the form attached to this deed and to act reasonably in negotiating any changes to the terms of the agreed form of the Financier's Side Deed provided that there is no material derogation

of the Landowner's rights under this deed or the form of the Financier's Side Deed attached to this deed; and

provided that:

- (ii) the Developer pays all Costs reasonably incurred by the Landowner arising out of or in connection with the agreements referred to in this clause 13.2(b) (including negotiating their terms); and
- (iii) the Landowner is satisfied (acting reasonably):
 - (A) that the Financier will not cause any reputational risk to the Landowner;
 - (B) with the credit standing of the Financier; and
 - (C) the entity providing commitments to the Landowner under the Financier's Side Deed is capable of financially performing those obligations.

13.3 Encumbering the Developer's interest in this deed

- (a) The Developer must not mortgage the Property (other than a mortgage of the Developer Social Housing Dwellings once the Developer becomes the registered proprietor of the Developer Social Housing Dwellings after the Date of Practical Completion).
- (b) The Developer must not mortgage, charge or otherwise encumber the Developer's interest in this deed without the prior consent of the Landowner.
- (c) The Landowner may give, give subject to conditions or withhold consent to a request under clause 13.3(b) at the Landowner's absolute discretion.

13.4 Landowner termination if Developer is not an Eligible Entity

If the Landowner or the Developer receives notice from Housing Australia that the Developer is not an Eligible Entity, the Landowner may terminate this deed by providing written notice to the Developer.

14. Landowner Capital Advance

14.1 Provision of Landowner Capital Advance

- (a) The Landowner has agreed to provide the Landowner Capital Advance to the Developer for the Developer to use to pay Development Costs in accordance with clause 14.2. The Developer must ensure that the Landowner Capital Advance is spent:
 - (i) only on the Project; and
 - (ii) to achieve the Project in accordance with this deed and the Project Objectives.
- (b) Despite any other provision of this deed, the Developer cannot make a progress drawdown claim in respect of the Development Costs (and the Landowner is not required to pay any amount in respect of such a claim) unless and until both of the following are satisfied:

- (i) all of the Preliminary Period Conditions have been satisfied or waived in accordance with this deed; and
- (ii) the Concessional Loan and Grant (as defined under the HAFFF Project Agreement) being provided by Housing Australia to the Developer in respect of the Project has been exhausted in accordance with the HAFFF Project Agreement.

14.2 Drawdown schedule

- (a) The Landowner will advance the Landowner Capital Advance on a progressive basis (but not more frequently than once in a month) provided that the Developer provides to the Landowner all of the following with respect to each progress drawdown claim:
 - (i) copies of invoices claimed by the Developer to be part of the Development Costs, which invoice must be itemised;
 - (ii) a certificate to the Landowner from the Developer certifying that:
 - A. the invoiced amounts are reasonable, proper and legitimate Development Costs which have been incurred by the Developer; and
 - B. the services, work and items to which the invoices relate have been done or installed in or on the Property or for the purpose of the Development and in accordance with the approvals of the Landowner and all relevant Approvals; and
 - (iii) a certificate to the Landowner from an independent quantity surveyor and independent superintendent, both approved by the Landowner, that the invoiced amounts are reasonable, proper and legitimate Development Costs which have been incurred by the Developer.
- (b) Provided that the Developer has complied with clause 14.2(a), the Landowner will within 15 Business Days of the date of receipt of the invoices and certificates referred to in clause 14.2(a), advance to the Developer the total amount certified under clause 14.2(a) in respect of the relevant progress drawdown claim (provided that such amounts do not, when combined with all previous payments, exceed the Landowner Capital Advance).
- (c) The Developer must promptly pay each of the architects, contractors, sub-contractors, quantity surveyors, consultants and others who have claimed under the certified invoices.
- (d) Unless otherwise agreed by the parties, progress drawdown claims by the Developer in respect of the Landowner Capital Advance will not on any day exceed the aggregate amount set out for progress drawdown claims up to and including that day in the drawdown schedule contained in Attachment 6.
- (e) Within 20 Business Days after each time the Landowner Capital Advance is adjusted under clause 15.3, the Developer must provide to the Landowner for approval (such approval not to be unreasonably withheld) an updated drawdown schedule which reflects the amount of the adjusted Landowner Capital Advance but is otherwise consistent with the drawdown schedule contained in Attachment 6.

15. Adjustment of Financial Model and Landowner Capital Advance

15.1 Financial Model

- (a) The parties acknowledge and agree that there will be a Contract Close Financial Model prepared by the Developer. This model will:
 - (i) identify the Landowner Capital Advance; and
 - (ii) include an estimated price for the Building Contract.
- (b) The Landowner Capital Advance has been calculated independently of the Contract Close Financial Model, and the inclusion of the model in this deed does not affect or determine the amount of the Landowner Capital Advance.

15.2 Updating the Financial Model

- (a) During the Preliminary Period, as and when the Developer satisfies each Preliminary Period Condition or such condition is waived in accordance with this deed on or before the relevant Preliminary Period Conditions Deadline, the Developer must update the Contract Close Financial Model to reflect the results of each Preliminary Period Condition being satisfied or waived in accordance with this deed and the expected and contracted Development Costs.
- (b) The Developer must give the Landowner full visibility of updates under this clause 15 to the Contract Close Financial Model on an open book basis.
- (c) The updated Financial Model referred to in clause 15.2(a) is provided for reference only. It does not create any obligation on the Landowner to approve or accept the updated model, nor to increase the Landowner Capital Advance as a result of any updates made to it.

15.3 Adjustment of Landowner Capital Advance

- (a) The parties must regularly discuss (including at meetings of the PCG) whether the Landowner Capital Advance will be sufficient in the lead-up to Financial Close.
- (b) Prior to the end of the Preliminary Period, if the Developer is of the opinion that there is insufficient funding to deliver and/or operate the Project, the Developer may issue a notice to the Landowner requesting an increase in the Landowner Capital Advance.
- (c) In the circumstances referred to in clause 15.3(b):
 - (i) the Landowner may (in its discretion):
 - A. increase the Landowner Capital Advance to cover some or all of the shortfall on terms and conditions to be agreed by the parties, and the Landowner Capital Advance will be varied accordingly; or
 - B. decline to increase the Landowner Capital Advance; and
 - (ii) the parties will work co-operatively with other lenders to the Project and potential new third party lenders to:
 - A. secure additional funding to cover the shortfall on terms and conditions that are agreed between all relevant parties; and/or

- B. mutually agree other changes to the Financial Model and/or Project Objectives as are necessary to address the Project funding shortfall.
- (d) If the additional funding referred to in clause 15.3(c)(ii)A has not been secured by the end of the Preliminary Period, no alternative solution has been mutually agreed under clause 15.3(c)(ii)B and a funding shortfall remains at the end of the Preliminary Period, this is a Preliminary Period Termination Trigger and clause 3.9(b) applies.
- (e) The parties will update the Financial Model to reflect any agreement or election of the Landowner under clauses 15.3(c)(i) and 15.3(c)(ii).
- (f) Notwithstanding anything else in this clause, if the Landowner reasonably determines that any request for an increase in the Landowner Capital Advance under clause 15.3(b) has arisen because the Developer (in the Landowner's reasonable opinion) sought to reduce its own contribution to the Project as identified in Contract Close Financial Model by requesting an increase to the Landowner Capital Advance, then the Landowner is not required to pay the Developer any amounts under clause 3.10.

15.4 Repayment of overpaid LCA Paid Amounts

If at any time the aggregate of all LCA Paid Amounts exceeds the amount of the Landowner Capital Advance (as adjusted) at that time, the Developer must repay the excess amount to the Landowner within 10 Business Days after notice from the Landowner requiring repayment of that excess amount.

16. Commencement of Works and Compliance with Approvals

16.1 Developer to commence and complete Works

- (a) The Developer must procure that the Works are commenced, constructed and completed:
 - (i) in a timely and efficient manner, with due expedition and without delay following satisfaction (or waiver) of the last of the Preliminary Period Conditions so as to achieve Practical Completion of the Works and the issue of an Occupation Certificate for the Works by the Sunset Date;
 - (ii) in accordance with this deed and the HAFFF Project Agreement;
 - (iii) in a proper and workmanlike manner using Good Industry Practice and using materials of a nature described in this deed, or failing any specific description then of high quality and fit for the Intended Purpose;
 - (iv) so as to satisfy, meet or exceed all the specifications, requirements and outcomes committed in this deed;
 - (v) in accordance with the:
 - A. the Agreed Development Consent;
 - B. the Final Design Documentation; and
 - C. all other Approvals and Laws; and

- (vi) using Good Industry Practices to ensure that the Works are executed so that upon completion of the Works, the Development complies with all Laws and relevant industry applicable standards.
- (b) The Developer must do everything necessary to ensure that each Approval does not expire or become invalid due to circumstances within the control of the Developer.
- (c) Subject to the Concept Design Documents (and, once finalised, the Final Design Document(s)), in respect of each Social Housing Dwelling, the Developer must design and carry out the Development so as to achieve the Social Housing Product Requirements and Finishes.

16.2 Not used

16.3 Developer Warranty

The Developer represents and warrants that on Practical Completion of the Works, the Development complies with and has been constructed and completed

- (a) in accordance with this deed;
- (b) in a proper and workmanlike manner using Good Industry Practice and using materials of a nature described in this deed, or failing any specific description then of high quality and fit for their Intended Purpose;
- (c) so as to satisfy, meet or exceed all the specifications, requirements and outcomes in this deed;
- (d) to meet or exceed the requirements within the NSW Government Apartment Design Guide and the LHA Gold Level standard of the Design Guidelines published by Livable Housing Australia;
- (e) using Good Industry Practices to ensure that the Works:
 - (i) comply with all Laws and relevant industry applicable standards; and
 - (ii) are otherwise fit for their Intended Purpose;
- (f) in accordance with:
 - (i) the Agreed Development Consent;
 - (ii) the Final Design Documentation;
 - (iii) a standard of finishes and fixtures that are compliant with the Final Design Documentation; and
 - (iv) all other Approvals and Laws.

16.4 Signage and advertising

The Developer must not without the consent of the Landowner (which may be withheld in the Landowner's absolute discretion), erect any signage or distribute an advertising material in digital or print form which contains any references to New South Wales Land and Housing Corporation, Homes NSW or the NSW Government or any synonym or acronym thereof.

16.5 Professional indemnity insurance

- (a) Before the Developer or any of its Associates commences any design or works in respect of the Works (including the Demolition Works), the Developer must effect (or cause the Builder and any consultants or contractors carrying out design in respect of the Works to effect) professional indemnity insurance with a limit of indemnity of not less than \$20 million for each claim and in the aggregate for all claims during any one 12 month policy period covering the liability of the Developer, the Landowner and Builder or relevant consultant or contractor at general law arising from a breach of duty owed in a professional capacity, by reason of any negligent act or omission of the Developer, the Builder, or any of their respective agents, contractors, employees and sub-contractors.
- (b) The Developer must ensure that the insurance referred to in clause 16.5(a) is maintained for the entire period from the commencement of design of the Works until the date which is 7 years after Practical Completion of the Works.

17. Project Risks

17.1 Project Risks

- (a) Subject to clause 3 (and unless otherwise provided in this deed or the other Transaction Documents), the Developer accepts all risks in connection with the implementation of the Project.
- (b) Without limiting or being limited by clause 17.1(a), the Developer accepts all of the following risks – that:
 - (i) the Works must comply with all Laws and any change in Law after the date of this deed;
 - (ii) the Developer does not obtain the financing necessary to carry out the Development and all the Works associated with the Development;
 - (iii) the Development is not commenced or is abandoned or not completed within the timeframes under this deed for any reason including one or more of the following matters:
 - A. any or all necessary Approvals (other than the Agreed Development Consent), licences, consents, naming rights, intellectual property rights, other rights are not available or delayed;
 - B. default by the Builder under the Building Contract (including default of any of the Builder's contractors or sub-contractors);
 - C. default by Developer;
 - D. delay in transporting plant and machinery;
 - E. failure of sophisticated unproven technology;
 - F. damage or destruction which is so extensive that it is not commercially viable to complete the Development;
 - G. import/export restrictions which deny entry/exit into/from the country of personnel or equipment required for the Development;

- H. the existence of subterranean storage tanks, walls or services or any other items below the surface of the Property which may adversely impact on the Development;
 - I. industrial relations risks, including industrial action targeting the Development;
 - J. infrastructure not being delivered to the Property or being delayed; and
 - K. neighbouring or other developments interfering with the Development;
- (iv) remediation works are required in respect of Contamination on the Property, including:
- A. remediation works that may be required to be undertaken before any construction is able to commence or continue;
 - B. any unforeseen pollution or Contamination which is created by the Works and Development;
 - C. Contamination that is discovered which was not discovered prior to the contract date;
 - D. the removal or the decommissioning of any tanks including subterranean tanks;
 - E. underestimation by the Developer of costs associated with the remediation of the Property;
 - F. remediation standards becoming more stringent after the date of this deed or as a result of the Property being used for a more sensitive purpose;
 - G. if a remediation process involves containment, containment fails because of defect; and
 - H. if a remediation process involves containment, containment fails because of interference by anyone other than the Landowner;
- (v) the actual costs of the Development exceed what was anticipated by the Developer for any reason;
- (vi) the Development, once completed, is not of the design or quality intended by the Developer for any reason including the following:
- A. the Development is not suitable for the purpose of which it was undertaken;
 - B. the Development will not be able to achieve or perform the required/guaranteed performance levels; and
 - C. latent defects in the Development;
- (vii) the provision of infrastructure inside and outside Development is delayed, not delivered, uncoordinated, unfunded, poor quality and includes increased costs, cost over-runs and/or delays;

- (viii) the Property is unsuitable for the Development because of, for example (and without limitation), geological/geotechnical reasons, archaeological reasons or flora or fauna reasons, the existence of subterranean storage tanks, mine subsidence walls or services which are known before construction or discovered during construction;
- (ix) a Native Title Application has been or is made in relation to the Property;
- (x) (other than in respect of the Agreed Development Consent) Approvals, Modifications of Development Consent or variations of Approvals required in relation to the Development are not obtained;
- (xi) (subject to clause 23) Force Majeure Events occur during the Development;
- (xii) the Developer or Builder become insolvent; and
- (xiii) economic fluctuations occur or there is a downturn in the residential property market.

17.2 Developer relies on own skill and judgment

Neither the requirement to obtain the Landowner's consent, nor any consent given by any Consent Authority or other relevant Authority imposes any duty, obligation or liability on the Landowner in relation to the design or construction of the Development and in this regard the Developer relies on its own skill and judgment, and that of its Associates in relation to the Works and the Development generally.

17.3 Developer's acknowledgment in relation to risk

The Developer must not make any Claim against the Landowner in relation to any representation or any advice in respect of a matter relevant to the Developer's assessment or undertaking of the Development or the Developer's decision to enter into this deed.

17.4 Home Building Act

The Developer must:

- (a) comply with all of the Landowner's obligations under the Home Building Act;
- (b) indemnify the Landowner against any warranties that the Landowner has to provide, or liabilities that the Landowner may incur, under the Home Building Act to any person;
- (c) take out all insurances that the Landowner is required to take out under the Home Building Act, and bear the cost of any insurances that the Landowner is required to take out under the Home Building Act; and
- (d) to the extent permitted by Law, be responsible to purchasers and occupiers of the Landowner Social Housing Dwellings and the Developer Social Housing Dwellings for the satisfaction of the Landowner's obligations and requirements under the Home Building Act.

17.5 Design and Building Practitioners Act 2020 (NSW)

- (a) The parties acknowledge and agree that:
 - (i) in respect of Project, the Landowner has not, and will not, perform building work, prepare designs, manufacture or provide building product,

supervise, coordinate, project manage or otherwise have substantive control over the carrying out of any Work; and

- (ii) for the purposes of the DBP Act and the DBP Regulation the person who carries out construction work in respect of the Project will be the Developer and not the Landowner.
- (b) The Developer warrants to the Landowner that it is fully aware of the requirements of the DBP Act and the DBP Regulation and the Developer undertakes to the Landowner to comply with all obligations under the DBP Act in and the DBP Regulation respect of the Project.

17.6 Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW)

- (a) The parties acknowledge and agree that:
 - (i) for the Project each of the Landowner and the Developer may be a RAB Developer but notwithstanding this the Developer will be responsible for, and will perform and satisfy, all obligations and liabilities placed on the RAB Developer under the RAB Act and RAB Regulations;
 - (ii) where any prohibition order, stop work order or building work rectification order is served on either of them under the RAB Act in respect of the Project they will promptly provide a copy to the other and the Developer must immediately comply with all such orders; and
 - (iii) where any compliance cost notice is served on either of them under the RAB Act in respect of the Project they will promptly provide a copy to the other and the Developer must pay the amount owing under the notice to the secretary under the RAB Act, or to the Landowner if the Landowner has already paid the amount to the secretary under the RAB Act.
- (b) The Developer warrants to the Landowner that it is fully aware of, and will comply with, all the requirements of the RAB Act and the RAB Regulations in respect of the Project.

18. Condition of the Property

18.1 Site Conditions

Subject to clause 3, the Developer acknowledges that it accepts responsibility for all Site Conditions and that it must construct the Works or procure the construction of the Works with proper consideration of the Site Conditions.

18.2 Condition of Property

The Developer:

- (a) represents and warrants to the Landowner that the Developer accepts:
 - (i) the nature, quality, condition and state of repair of the Property and all matters arising from the Property; and
 - (ii) the Property (including, without limit, any improvements, fixtures and inclusions (if applicable)) as it is and subject to all defects (latent or patent, including any Latent Condition) and all dilapidation and infestation and subject to the presence of any Contamination; and

- (b) subject to clause 3 must not make any objection or claim for compensation against the Landowner, delay the carrying out of any Works (such that the Developer may not achieve a Milestone in accordance with this deed) or terminate this deed because of anything in connection with:
- (i) any of the matters referred to in clause 18.1;
 - (ii) loss, damage, dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Property except to the extent caused or contributed to by the Landowner or the Landowner's Associates (other than the Developer and the Developer's Associates) after the date of this deed;
 - (iii) permissibility of land uses on the Property;
 - (iv) the presence in or on the Property of Contamination except to the extent any Contamination was caused or contributed to by the Landowner or the Landowner's Associates (other than the Developer and the Developer's Associates) after the date of this deed;
 - (v) the condition or existence or nonexistence of services: or
 - (vi) any action or non action by any person.

18.3 No claims

Subject to clause 3, the Developer is not entitled to make any objection or any claims for compensation against the Landowner in relation to condition of the Property.

19. Contamination, environmental, Native Title and heritage obligations

19.1 Contamination

The Developer acknowledges and agrees that:

- (a) there is Contamination on the Property and/or any improvements on the Property, including as detailed in the Disclosure Materials; and
- (b) there may be Pollution on the Property and/or in any improvements on the Property.

19.2 Environmental Laws

The Developer must comply with and observe all Environmental Laws in carrying out the Project and complying with its obligations under this deed.

19.3 Developer not to cause Pollution or Contamination

Except where it is authorised pursuant to any Approval, the Developer must not cause any Pollution or Contamination in respect of the Project.

19.4 Environmental matters

In addition to the other requirements under this deed, the Developer agrees to keep the Landowner informed in connection with all material environmental aspects of the Works.

19.5 Environmental risk

- (a) Subject to clause 19.5(b), the Developer acknowledges and agrees that subject to the provisions of this deed, the Developer bears the risk of complying with all Environmental Laws and is not entitled to:
- (i) make a claim, objection or requisition against the Landowner or delay, rescind or terminate any Transaction Document; or
 - (ii) request any extension of time to perform its obligations under any Transaction Document,
- by reason of the Developer complying with and observing all Laws in connection with:
- (iii) the Property until Practical Completion of the Works;
 - (iv) the Works; or
 - (v) the use or occupation of Developer controlled property until Practical Completion of the Works,
- whether or not those Laws are imposed on the Landowner or the Developer.
- (b) The Developer is not required to comply with Environmental Laws where such compliance is necessitated by Contamination to the Property caused or contributed to by wrongful or reckless act by the Landowner or the Landowner's Associates after the date of this deed.

19.6 Finding of Relics

The Developer:

- (a) acknowledges and agrees that:
- (i) Relics may be found on, in or under the surface of the Property; and
 - (ii) as between the Landowner and the Developer, any such Relics are and will remain the property of the Landowner (unless otherwise directed by the Landowner); and
- (b) must, upon the discovery of a Relic:
- (i) promptly notify the Landowner; and
 - (ii) comply with all Laws relating to the discovery of the Relic.

19.7 Native Title Applications and Threatened Species Claims

The Developer agrees that if:

- (a) there is a Native Title Application; or
- (b) a Threatened Species Claim is commenced,

affecting any part of the Property or the carrying out of the Works, the Developer must:

- (c) continue to perform its obligations under this deed and the other Transaction Documents unless otherwise:

- (i) ordered by any court or tribunal; or
- (ii) required by Law; and
- (d) take all reasonable steps to mitigate any loss or Cost to the Landowner arising out of clause 19.7(c).

19.8 No claim by Developer

Except as otherwise expressly provided in this deed, the Developer may not make a Claim against the Landowner for any Costs, Losses or damages incurred by the Developer arising from or in connection with any of the matters referred to in clauses 19.6 and 19.7.

20. Workplace health and safety

20.1 Application of this clause 20

In this clause 20, terms that are capitalised but not defined have the meanings given to them in the WHS Act or the WHS Regulation.

20.2 Developer's obligations

- (a) The Developer must ensure that:
 - (i) in carrying out any Works it complies with the WHS Act and WHS Regulation;
 - (ii) the Builder, all subcontractors and consultants and all persons for whom it is responsible or over whom it is capable of exercising control, comply with the requirements referred to in this clause 20 and their respective obligations under the WHS Act and WHS Regulation;
 - (iii) it complies with its obligation under the WHS Act and WHS Regulation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
 - (iv) it does not do anything or fail to do anything that would cause the Landowner to be in breach of the WHS Act and WHS Regulation;
 - (v) the duties imposed on a principal contractor under the WHS Act and WHS Regulation are discharged;
 - (vi) immediately (and in any case not less than two hours) upon becoming aware of a Notifiable Incident, the Developer notifies the Landowner of any Notifiable Incident (in addition to notifying the relevant Authority) and of any safety-related correspondence (including a prohibition or improvement notice) issued by any relevant Authority in connection with the Works, the Developer or the Builder and any other person who will undertake the Works; and
 - (vii) it imposes corresponding obligations to those set out in clause 20.2(a)(iv) on the Builder and any other person who will undertake the Works.
- (b) In this clause, **Notifiable Incident** means any incident requiring notification to an Authority under the WHS Act or WHS Regulation.

20.3 WHS Audit

- (a) If requested by the Landowner, the Developer must allow, and do all things reasonably necessary to allow the Landowner to conduct (or the Landowner to procure) an audit of compliance on the Developer, the Builder or any other person undertaking the Works in accordance with this clause 20 and under the WHS Act and WHS Regulation.
- (b) The Developer must allow a third party appointed by the Landowner to conduct the audits as required by clause 20.3(a) from time to time as reasonably required by the Landowner.
- (c) If an audit identifies any breach of this clause 20 or the WHS Act or the WHS Regulation, the Developer must, within a reasonable time, given the nature of the breach, and at its own Cost:
 - (i) do all things necessary to remedy that breach; and
 - (ii) comply with all reasonable directions of the Landowner in respect of remedying that breach.

20.4 No release

For the avoidance of doubt, nothing in this clause 20 in any way releases the Developer from its obligations to the Landowner under this deed.

21. Project Control Group

21.1 PCG Establishment

- (a) The Landowner and the Developer must establish a PCG.
- (b) The parties will endeavour to establish the PCG within 20 Business Days after the date of this deed.

21.2 PCG composition

- (a) The PCG will be comprised of 2 representatives appointed by the Developer and 2 representatives appointed by the Landowner.
- (b) A party may replace a representative with another of equivalent seniority by notice in writing to the other party if the representative:
 - (i) leaves the employment of the relevant party; or
 - (ii) is no longer involved in the Project.

21.3 Quorum

- (a) The quorum for any meeting of the PCG will be 2 representatives nominated by each of the Landowner and the Developer.
- (b) If a quorum is not present after the first 30 minutes, the meeting will be adjourned for one week.
- (c) A meeting of the PCG may not proceed to business until a quorum is present.

21.4 PCG meetings

- (a) The PCG must meet at least once every calendar month or such other times as agreed between the parties until the Date of Practical Completion.
- (b) All meetings of the PCG will be held at the time and place agreed by the members.
- (c) The PCG may conduct their meetings wholly or partly by telephone, teleconference or video conference facility or any other electronic device but a quorum of members present or otherwise attending must be in simultaneous contact or communication with one another.
- (d) The Developer must provide a meeting agenda (including all supporting materials to be considered by the PCG) to the Landowner at least 5 Business Days before each meeting of the PCG.

21.5 Minutes

- (a) The Developer:
 - (i) is responsible for preparing minutes of meetings of the PCG and for preparation of action lists of matters that need to be undertaken or pursued following each such meeting;
 - (ii) must provide the minutes and action lists to the Landowner within 5 Business Days after each PCG meeting; and
 - (iii) must make such amendments to the minutes and action lists as requested in writing by the Landowner (acting reasonably) no later than 10 Business Days after receipt of the original meeting minutes and action lists, and promptly provide the amended minutes and action list to the Landowner.
- (b) No member of the PCG has any power to bind the parties to any act, matter or thing otherwise than pursuant to an express written authority to do so given from time to time by any party or an express power granted under this deed.

21.6 Voting

Each representative has one vote on all matters to be considered by the PCG and the decisions of the PCG must be unanimous.

21.7 Limitations on PCG

- (a) Each representative of the PCG must act reasonably, consistent with this deed and within the delegated authority of that representative's appointing party in considering a matter before the PCG.
- (b) Except with the unanimous agreement of the PCG, when considering a matter before the PCG each representative of the PCG must take into account and must not make decisions inconsistent with previous approvals given by the PCG.

21.8 Reports

- (a) The Developer must produce a PCG Report in advance of each PCG meeting, and provide a copy of that PCG Report to each of the Landowner's representatives no later than 5 Business Days before the relevant PCG meeting.
- (b) At the first PCG meeting the parties will agree the contents of the PCG Report, which can be changed by agreement by the PCG over the course of the Project:

- (c) Where an event occurs which impacts on the timing of the Works and the event cannot be quickly addressed by the Developer without reference to the PCG (**Delay Event**):
 - (i) the Developer must provide reasonable details of the Delay Event to the PCG; and
 - (ii) the PCG must consider the details and make recommendations to the Developer about any remedial action which is reasonably necessary to address the consequences of the Delay Event.
 - (d) After consulting with the PCG, the Developer will take such action as is reasonably necessary to address the consequences of the Delay Event, having regard to the recommendations of the PCG provided it is not required to incur any Costs in doing so.
 - (e) The Developer must include details of any action taken by it in respect of a Delay Event in the PCG Report immediately following the occurrence of a Delay Event.
 - (f) Where a:
 - (i) change in Law; or
 - (ii) change in government policy,occurs which adversely impacts on the Project the Developer must provide reasonable details of such change in Law or change in government policy to the PCG.
-

22. Ownership of Intellectual Property

22.1 Developer's Warranty

The Developer warrants that:

- (a) the Developer is entitled to use the Intellectual Property for the completion of the Development and the performance by the Developer of its obligations under this deed;
- (b) the completion of the Development, the performance by the Developer of its obligations under this deed or the enjoyment by the Landowner of the rights or benefits it has under this deed or otherwise at Law will not involve the breach of any rights of any third party; and
- (c) it is able and entitled to grant the licence described in clause 22.3.

22.2 Developer's Indemnity

The Developer indemnifies and will keep indemnified the Landowner, its officers, employees, agents and contractors from and against all Claims, liability, Loss, damage, Costs and expenses (including legal costs on a solicitor and own client basis) arising out of any Claim that the Intellectual Property or any use thereof by or on behalf of the Landowner infringes the rights of a third party.

22.3 Grant of licence

- (a) The Developer grants to the Landowner a perpetual, irrevocable, non-exclusive and royalty free licence to use, reproduce, modify and adapt the Intellectual Property for the purpose of enjoying the benefit of the Development and otherwise as described in clause 22.3(b).

- (b) The Landowner may use and may authorise other persons to use the Intellectual Property, all Design Documentation and any other materials or information prepared by or on behalf of the Developer as part of or in connection with the Development including any enhancements or modifications thereto, for any purpose whatsoever in connection with the Development (including any subsequent refurbishment, reconstruction, alteration or extension of or to the Development).

22.4 Further action required by the Developer

The Developer:

- (a) must, at the request of the Landowner, execute any document reasonably required by the Landowner for the purpose of perfecting or more fully giving effect to the licence described in clause 22.3;
- (b) must do all such further acts, including securing such additional rights as may be necessary to give effect to the granting of the licence described in clause 22.3;
- (c) irrevocably appoints the Landowner as its attorney with full power and authority to execute any document described in clause 22.4(a); and
- (d) must deliver to the Landowner a copy of all Design Documentation, and any enhancements or modifications thereto as it is approved by the Landowner under this deed.

22.5 Landowner's rights on termination

- (a) The licence described in clause 22.3 and the Landowner's rights under this clause 22 will not be affected by any matter or thing, including without limitation the termination of this deed or any dispute under this deed and the Landowner will be able to rely on the licence described in clause 22.3 in the event of the termination of this deed and will be able to use the Intellectual Property and all Design Documentation (together with any other materials prepared by or on behalf of the Developer as part of or in connection with the Development) as if it owned that information.
- (b) On the termination of this deed, the Developer will assign or novate to the Landowner (or anyone nominated by the Landowner) at the Developer's cost all Intellectual Property, Design Documentation and any other material referred to in clause 22.5 which has been prepared by or on behalf of the Developer as part of or in connection with the Development.

22.6 Moral Rights warranty

The Developer must use its best endeavours to procure to the extent permitted by Law, an undertaking, from each individual author employed by each party performing any design work in relation to the Works, not to enforce any Moral Rights that an author may have, now or in the future, in any such design work in which copyright subsists, so that the Landowner may freely exercise its rights pursuant to the licence granted under this clause 22.

22.7 Transfer of Landowner's Intellectual Property

- (a) In this clause, the **Landowner's Intellectual Property** means the Landowner's right, title and interest in all intellectual property rights (including without limitation all copyright) created for or on behalf of the Landowner in the Concept Design Documents.
- (b) The Landowner warrants that:

- (i) the Landowner is entitled to use the Landowner's Intellectual Property for the completion of the Development; and
 - (ii) it is able and entitled to transfer or novate the Landowner's Intellectual Property rights in accordance with clause 22.7(c).
- (c) The Landowner must use its best endeavours to transfer or novate to the Developer the Landowner's Intellectual Property rights. Any transfer or novation of the Landowner's Intellectual Property rights referred to in this clause:
 - (i) will take effect from the date of the deed of novation or transfer entered into by the parties and any relevant third parties in respect of the Landowner's Intellectual Property rights; and
 - (ii) only takes effect to the extent to which the relevant consultant or individual author engaged by or on behalf of the Landowner in connection with the Landowner's Intellectual Property has been engaged on the terms of the Landowner's standard consultancy agreement, or other agreement, which permits the transfer or novation referred to in this clause 22.7(c).
- (d) On the termination of this deed, the Developer will assign or novate the Landowner's Intellectual Property to the Landowner (or anyone nominated by the Landowner).

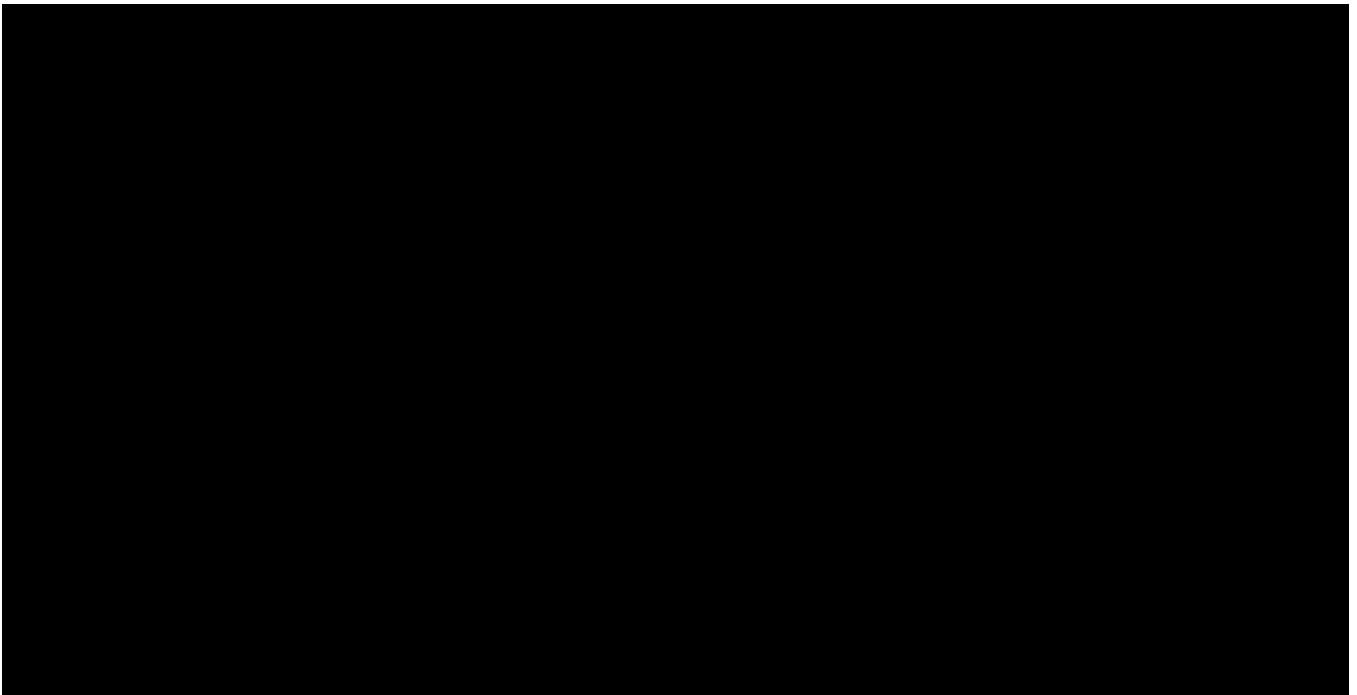
22.8 No merger

This clause 22 and the rights and obligations of the Landowner and the Developer continue beyond termination of this deed.

23. Milestones and extensions of time

23.1 Achieving Milestones by the Milestone Date

The Developer must achieve each of the Milestones by the relevant Milestone Date.



23.3 Conditions precedent to extensions of time – Milestone Date

The Developer may only claim an extension of time under clause 23.2 if:

- (a) the Developer gives to the Independent Certifier and the Landowner details of the number of days claimed, the date the cause of delay first arose, and the date the delay ceased within 20 Business Days after the earlier of the day the Developer became aware, and the day the Developer ought reasonably to have become aware, of the cause of delay ceasing;
- (b) (and to the extent) the delay has not been caused or contributed to by the Developer or the Developer's Associates (including any subcontractor or proposed tenant); and
- (c) the Developer has used its reasonable endeavours to remedy the cause of the delay and to minimise the delay provided the Developer is not obliged to incur any Costs in doing so.

23.4 Concurrent delays – Milestone Date

If more than one event set out in clause 23.2 causes concurrent delays, then to the extent that the delays are concurrent the Developer is not entitled to an additional extension of time to the Milestone Date.

23.5 Determination by Independent Certifier – matters for consideration

The issue of whether the Developer is or is likely to be delayed in achieving a Milestone by a Milestone Date as a result of one of the reasons in clause 23.2(a) to 23.2(d) (inclusive) must be referred for determination by the Independent Certifier. In determining whether the Developer is or is likely to be delayed in achieving a Milestone by a Milestone Date as a result of one of the reasons in clause 23.2(a) to 23.2(d) (inclusive), the Independent Certifier:

- (a) may take into account whether the Developer has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay (provided the Developer is not obliged to incur any Costs in doing so); and
- (b) may not take into account whether the Developer can achieve the Milestone by the Milestone Date without an extension of time.

The Independent Certifier must promptly notify the Developer and the Landowner of the Independent Certifier's determination about whether a Milestone Date is extended and, if so, by what period.

23.6 Determination of Independent Certifier final – Milestone Date

The Independent Certifier's determination under clause 23.5 is final and binding except in the case of manifest error, in which case either party may refer the issue to determination in accordance with clause 35.

23.7 Changes to the Milestone Date – extensions of time

If the Developer obtains an extension of time under clause 23.5, then the relevant Milestone Date is deemed to be extended by the number of days granted under clause 23.5.

23.8 Limitation to extension of time – Milestone Dates

Notwithstanding any other provisions in this deed, the Landowner and the Developer agree that no extension of time will be given to the Developer in any circumstances which has the effect of extending a Milestone Date by more than 3 months after the Milestone Date originally

provided for in this deed unless the cause of the extension of time is as a result of one of the following:

- (a) an act or omission of the Landowner or the Landowner's Associates resulting in a breach of this deed by the Landowner, or because of the wrongful or reckless act or omission of the Landowner or the Landowner's Associates; or
- (b) the Landowner is required to grant or refuse its approval or consent, and the Landowner does not grant or refuse its approval or consent within the time stipulated in this deed,

and provided always that the Milestone Date (if extended under this clause) does not result in a date that is after the Date of Satisfaction (as defined under the HAFFF Project Agreement).

23.9 Unilateral right to grant extension - Milestone Dates

Notwithstanding that the Developer is not entitled to or has not claimed an extension of time under this clause 23, the Landowner may at any time direct an extension of time to the Milestone Date by giving written notice to the Developer but the Landowner has no obligation to grant, or to consider whether it should grant, an extension of time and the Landowner is not required to exercise this discretion for the benefit of the Developer.

23.10 Extensions of time to the Sunset Date or Milestone Date

- (a) In addition to the Developer's rights under this clause 23 to an extension of time, if the Developer, as recipient under the HAFFF Project Agreement, is entitled to (and is granted) an extension of time to:
 - (i) the Longstop Date under the HAFFF Project Agreement, or if the Longstop Date under the HAFFF Project Agreement is otherwise varied by Housing Australia and the Developer resulting in an extension of the Longstop Date,

then:
 - (ii) the Sunset Date is extended by the same period of time as the Longstop Date is extended under the HAFFF Project Agreement.
- (b) Within 5 Business Days of the Longstop Date being extended under the HAFFF Project Agreement, the Developer must give to the Landowner notice of the date to which the Longstop Date is extended.

24. Development Costs

24.1 Determination of Development Costs

- (a) The Developer must:
 - (i) on or before the Date of Practical Completion, submit to the Landowner the Developer's reasonable estimate of the total Development Costs (plus GST); and
 - (ii) as soon as practicable, submit to the Landowner the Developer's determination of the total Development Costs (plus GST).
- (b) The parties agree that as soon as practicable following the Developer's determination of the total Development Costs (plus GST) referred to in clause 24.1(a)(ii) and in any event within 5 Business Days of that date, the parties will

exchange adjustment notes in accordance with clause 36.7 for their respective supplies under this deed.

24.2 Apportionment of Development Costs

The Developer must:

- (a) in conjunction with the reasonable estimate of total Development Costs (plus GST) provided under clause 24.1(a)(i), provide the Landowner with a Development Costs Apportionment Statement, calculated in accordance with that reasonable estimate; and
- (b) in conjunction with the determination of total Development Costs (plus GST) provided under 24.1(a)(ii), and to the extent that the determination of the total Development Costs (plus GST) provided by the Developer under clause 24.1(a)(ii) differs from the reasonable estimate provided under clause 24.1(a)(i), provide a revised Development Cost Apportionment Statement calculated in accordance with that determination.

25. Practical Completion

25.1 Developer to provide notice

The Developer must give to the Landowner a written notice specifying the date the Developer estimates that Practical Completion will occur:

- (a) 30 days before that date; and
- (b) 7 days before that date.

25.2 Inspection of Works

- (a) Within 2 Business Days after service of the notice referred to in clause 25.1(b), the Developer and the Landowner must inspect the Works together with the Independent Certifier and the Developer will request in writing that the Independent Certifier issues the Certificate of Practical Completion.
- (b) Within 5 Business Days of receiving the request from the Developer referred to in clause 25.2(a), the Developer must procure the Independent Certifier to give the Developer and the Landowner either a Certificate of Practical Completion or written reasons for not doing so.
- (c) If the Independent Certifier determines that the Certificate of Practical Completion is not to be issued, the Developer will procure that not less than 2 Business Days' notice is given to the Landowner and the Independent Certifier of the intention to re-inspect the Works with a view to issuing the Certificate of Practical Completion. This procedure will be repeated as often as is necessary until the Certificate of Practical Completion is issued.

25.3 Issue of Certificate of Practical Completion

The Developer must procure the Independent Certifier to issue a Certificate of Practical Completion when Practical Completion has been achieved in respect of the Works.

26. Defects warranty

26.1 Defects Period

- (a) Subject to clause 26.2, as soon as practicable after the Date of Practical Completion but no later than the expiration of the Defects Period, the Developer must, at its Cost, rectify all Defects in the Social Housing Works and/or the Shared Services Works whether or not they are:
 - (i) identified and notified to the Developer by the Landowner or the Independent Certifier during the Defects Period; or
 - (ii) the Developer becomes aware of the Defect by other means.
- (b) If the Developer is required to rectify any Defect under this clause 26 after the Date of Practical Completion, the Landowner must provide the Developer with reasonable access to the Landowner Social Housing Dwellings in order for the Developer to comply with this clause 26.
- (c) When rectifying Defects after the Date of Practical Completion, the Developer must do so at times:
 - (i) so as to minimise the impact on the Landowner's use of the relevant Landowner Social Housing Dwellings and Shared Services Works; and
 - (ii) in a manner which causes as little inconvenience as possible to the Landowner or the occupiers of the Landowner Social Housing Dwellings and users of the Shared Services Works.

26.2 Defect notification

- (a) If at any time prior to the expiration of any Defects Period, the Landowner discovers or believes there is a Defect, the Landowner may give the Developer a direction identifying the Defect and requiring the Developer to rectify the Defect, or any part of it, and specifying the reasonable time within which this must occur.
- (b) If the Developer does not rectify a Defect within the time specified in clause 26.2(a) (as may be extended by the Landowner acting reasonably having regard to the nature of the Defect) then:
 - (i) the Landowner may give notice to the Developer requiring the Developer to commence, continue or complete (as the case may be) the rectification of the Defect within the time specified in the notice given under this clause 26.2(b)(i); and
 - (ii) if the Developer does not comply with the notice under clause 26.2(b)(i), the Landowner may by written notice to the Developer appoint a contractor to rectify the Defect at the Developer's Cost (**Appointed Contractor**).
- (c) Subject to clause 26.6, if the Landowner appoints an Appointed Contractor:
 - (i) the Developer is responsible for any further rectification works arising out of the work performed by the Appointed Contractor; and
 - (ii) the Developer remains liable for Loss suffered or incurred by the Landowner from the Defect.

- (d) To the extent that the rectification of Defects has been performed by an Appointed Contractor, the Landowner will inform the Developer of completion of the rectification of the Defects performed by the Appointed Contractor.

26.3 Rectification of Defect

If a direction is given under clause 26.2(a):

- (a) the Developer must, at its Cost, rectify the Defect (or the part of it) identified in the direction:
 - (i) within the time specified in the Landowner's direction;
 - (ii) in accordance with the requirements of the Landowner and any other relevant Authority;
 - (iii) so as to minimise the impact on the use of the relevant Landowner Social Housing Dwellings and the Shared Services Works by the Landowner or occupiers; and
 - (iv) in a manner which causes as little inconvenience as possible to the Landowner or occupiers of the Landowner Social Housing Dwellings and the Shared Services Works; or
- (b) if the Developer:
 - (i) does not agree that there is a Defect then the Developer may, at its Cost, refer the matter to an expert nominated by the President of the Australian Institute of Architects NSW Chapter for resolution and will only be required to rectify the alleged Defect if the expert determines that there is a Defect; or
 - (ii) is unable (acting reasonably) to rectify the Defect in accordance with the Landowner's direction, then the Developer may, at its Cost, submit an alternative proposal to the Landowner for rectifying the Defect. If that proposal is accepted by the Landowner, the Developer must then rectify, at its Cost, the Defect in accordance with the proposal. The parties must use reasonable endeavours to achieve the best solution to rectify the Defect and if the parties are unable to agree on the manner for rectification of the Defect within 15 Business Days of the date of a direction under clause 26.2(a) then either the Developer or the Landowner may appoint an expert nominated by the President of the Australian Institute of Architects NSW Chapter to make a determination in relation to the manner for rectification of the Defect. The Cost of the expert must be borne by the Developer and the determination is final and binding on the parties. The Developer must, at its Cost, rectify the Defect in accordance with the expert's determination.

26.4 Claims for correction of Defect

The Developer will not be entitled to make a Claim against the Landowner for rectifying any Defect.

26.5 Extension of Defects Period

If:

- (a) the Landowner gives the Developer a direction under clause 26.2(a) during any Defects Period; and

- (b) the Developer rectifies the Defect (or the part of it) identified in the direction (or if an Appointed Contractor rectifies the Defect as provided for in clause 26.2),

the relevant Defects Period for that part of the Social Housing Works or Shared Services Works the subject of the direction may be extended by the Landowner up to the period of 12 months commencing upon achievement of the rectification of the Defect (or the part of it) identified in the direction or such longer period as agreed between the parties.

26.6 Defect rectification by Appointed Contractor

If the Landowner has appointed an Appointed Contractor:

- (a) the Developer acknowledges and agrees that, except where the Appointed Contractor causes wilful damage to the Social Housing Works or the Shared Services Works while rectifying a Defect, the Landowner will not be liable upon any Claim by the Developer arising out of or in any way in connection with the Appointed Contractor rectifying the Defect; and
- (b) the Landowner must use reasonable endeavours to ensure that the Landowner obtains a warranty from the Appointed Contractor in respect of its Defect rectification work which is in a form and for a period which would normally be provided for similar work to the work performed as determined by the Landowner acting reasonably.

26.7 Rights not affected

Neither the Landowner's rights nor the Developer's liability, whether under this deed or otherwise according to Law in respect of Defects and whether before, on or after the expiration of the Defects Period, will be in any way affected or limited by:

- (a) the rights conferred upon the Landowner by this clause 26 or any other provision of this deed;
- (b) the exercise of, or the failure by the Landowner to exercise, any rights; or
- (c) any notice or direction of the Landowner under clause 26.2.

27. Transfer of Developer Social Housing Dwellings

27.1 Contract for the Sale of Developer Social Housing Dwellings

- (a) Prior to the Date of Practical Completion, the Landowner must prepare the Contract in the form of the Proposed Contract in accordance with clause 27.3, and by including necessary updates to the Proposed Contract for Sale, which without limitation include the following:
 - (i) inserting the address and title details for the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities on the front cover page, Schedule 3 and Schedule 4;
 - (ii) on page 2, ticking the list of documents to be attached to the Contract and attaching the relevant documents to the Contract;
 - (iii) not used;
 - (iv) inserting the purchaser's details on the front cover page and in Schedule 3;
 - (v) inserting the purchaser's solicitor's details on the front cover page;

- (vi) inserting the purchaser's notice details in special condition 64(a);
 - (vii) updating the execution blocks of the parties;
 - (viii) updating Schedule 2 (Information Documents); and
 - (ix) updating Schedule 4 (Vendor's replies to the requisitions on title),
- and issue it to the Developer for execution as purchaser.
- (b) The Developer must execute the Contract referred to in clause 27.1(a) and return the executed Contract to the Landowner within 10 Business Days after receiving the Contract referred to in clause 27.1(a) from the Landowner.
 - (c) The Landowner must execute the Contract referred to in clause 27.1(a) and return an executed counterpart of the Contract to the Developer within 10 Business Days after receiving the Contract referred to in clause 27.1(a) executed by the Developer.

27.2 Conveyancing Act documents

The Developer acknowledges that copies of the documents prescribed for the purpose of section 52A(2)(a) of the *Conveyancing Act 1919* (NSW) were attached to this deed before the Developer signed this deed.

27.3 Updating Proposed Contract

If, before the Date of Practical Completion, the Landowner's solicitors give the Developer's solicitors all or any one or more of the following:

- (a) a document or documents that a change in the Law since the date of this deed requires to be attached to a contract for sale of land;
- (b) an updated version of any document or documents attached to the Proposed Contract; or
- (c) an updated description of the title to the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities to be transferred to the Developer,

or if the Developer Social Housing Dwellings are the subject of a strata plan of subdivision, then the Developer agrees that the Landowner is entitled to do all or any one or more of the following, as the case may require:

- (d) attach the document or documents to the Contract;
- (e) replace the relevant parts of the Proposed Contract with the updated version the document or documents;
- (f) update the description of the title to the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities to be transferred to the Developer; and
- (g) update the Contract as necessary to reflect that the Developer Social Housing Dwellings are the subject of a strata plan.

27.4 No caveat

- (a) The Developer must not lodge a caveat on the title to the Property.

- (b) If a person claiming through the Developer (including the Developer's Financier) lodges a caveat on the title to the Property, then the Developer must procure that the caveat is withdrawn promptly.

28. Default

28.1 Trigger Notice

- (a) If a Trigger Event occurs, the Landowner may give the Developer a notice specifying the Trigger Event and stating that the Developer must remedy that Trigger Event.
- (b) If the Landowner gives the Developer a Trigger Notice under clause 28.1(a), the Developer must:
 - (i) immediately take steps to remedy, mitigate, minimise or avoid the effects, consequences or duration of the Trigger Event;
 - (ii) do all things necessary to prevent the occurrence of the Trigger Event; and
 - (iii) (if the Trigger Event is capable of cure) within 10 Business Days after the Trigger Notice, provide to the Landowner a draft remediation plan, which must include:
 - A. the nature of the Trigger Event and its cause;
 - B. the steps being or to be taken by the Developer to identify and investigate the cause of and rectify and prevent the occurrence or reoccurrence of the Trigger Event;
 - C. each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to remedy or prevent the Trigger Event from recurring;
 - D. the timeline for remedying the Trigger Event, which must be appropriate for the nature of the Trigger Event and must not, in any circumstance, exceed 6 months or the Sunset Date;
 - E. any temporary measures that will be undertaken while the Trigger Event is being cured in order to ameliorate the impact of the Trigger Event; and
 - F. the form and timing of reports to be given to the Landowner and Housing Australia as to the status of the Developer's implementation of the draft remediation plan.
- (c) As soon as practical after the Developer provides a draft remediation plan under clause 28.1(b)(iii), the parties must liaise and consult, in good faith, with a view to agreeing the draft remediation plan, including any amendments to that plan. If the parties cannot agree on the draft remediation plan within 5 Business Days after the Developer has provided the draft remediation plan under clause 28.1(b)(iii) (or such longer period of time as the parties may agree), then the draft remediation plan will be amended in accordance with the reasonable requirements of the Landowner and Housing Australia. For the purposes of this deed, the draft remediation plan as agreed or amended in accordance with this clause 28.1(c) is the **Remediation Plan**.
- (d) The Developer must comply with the Remediation Plan.

- (e) The Developer must, at the request of the Landowner, attend any meeting or provide reasonable additional information relating to any Trigger Event or Remediation Plan.
- (f) The Developer acknowledges that its obligation to cure a Trigger Event, including by the time specified in the relevant Remediation Plan, is not relieved or affected in any way by reason of:
 - (i) the Landowner approving or accepting the Remediation Plan, or the inclusion of amendments suggested or specified by the Landowner; or
 - (ii) subject to clause 28.1(g), the fact or likelihood that the relevant Trigger Event is not capable of cure, or cannot practically be cured in the time or in the manner specified in the Remediation Plan.
- (g) Where a Trigger Event is not capable (or deemed capable) of cure (in the Landowner's opinion), the Developer must comply with the reasonable requirements of the Landowner in respect of that Trigger Event.
- (h) Where a Trigger Event occurs and the Developer fails to:
 - (i) provide a Remediation Plan which is acceptable to the Landowner (acting reasonably);
 - (ii) implement the Remediation Plan in its entirety or within the timeframes agreed in the Remediation Plan;
 - (iii) cure the Trigger Event despite diligently pursuing implementation of the Remediation Plan; or
 - (iv) comply with the requirements of the Landowner in respect of a Trigger Event that, in the opinion of the Landowner, is not capable (or deemed capable) of cure for the purposes of this clause,

this will be an "**Event of Default**" and the Landowner may give the Developer a notice stating that an Event of Default has occurred.
- (i) The Landowner's rights under this clause are without prejudice to the Landowner's other rights under this deed.

28.2 Landowner may rectify

The Landowner may, but is not obliged to, remedy (including by entering upon the Property for the purpose of doing so) any Event of Default. The Developer must pay to the Landowner on demand a sum equal to the Costs incurred by the Landowner (including legal Costs) in remedying an Event of Default.

28.3 Landowner may terminate

If an Event of Default occurs, subject to the right of any Financier under the terms of the Financier Tripartite Deed, the Financier's Side Deed, or any other document entered into by a Financier, the Developer and the Landowner, the Landowner may terminate this deed by notice in addition to its rights under clause 28.2.

28.4 Indemnity in connection with breach

The Developer:

- (a) indemnifies the Landowner against any liability or Loss arising from, and any Costs incurred in connection with:

- (i) a Trigger Event;
- (ii) an Event of Default; or
- (iii) the Landowner rectifying the Developer's breach of its obligations under this deed including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher,

provided that the indemnity in relation to clause 28.4(a)(iii) will not extend to any such liability, Losses or Costs as referred to in that clause directly caused by any wrongful or reckless act by the Landowner or any of the Landowner's Associates; and

- (b) agrees to pay the Landowner on demand a sum equal to any liability, Loss or Cost of the kind referred to in clause 28.4(a) incurred by any of the Landowner's Associates including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher, subject to the receipt of written evidence and provided that any such Costs are reasonably incurred.

28.5 Rights not affected

The indemnity under clause 28.4(a) is not affected or limited, and the Landowner's entitlement to recover damages from the Developer or any other person is not affected or limited, by:

- (a) the Landowner terminating this deed; or
- (b) the Landowner accepting the Developer's repudiation.

28.6 Waiver

The Landowner and the Developer agree that:

- (a) the Landowner's failure to enforce any breach of covenant on the part of the Developer is not to be construed as a waiver of that breach, nor shall any custom or practice which may grow up between the parties in the course of administering this deed be construed to waive or lessen the right of the Landowner to insist upon the performance by the Developer of any term, covenant or condition of this deed, or to exercise any rights given to the Landowner on account of any such default; and
- (b) a waiver by the Landowner of a particular breach will not be deemed to be a waiver of the same or any other subsequent breach or default.

28.7 Developer's obligations on termination

If this deed is terminated, the Developer must:

- (a) vacate the Property on the date that this deed is terminated;
- (b) leave the Property in a safe and secure condition;
- (c) remove from the Property anything brought onto the Property by or on behalf of the Developer;
- (d) make good any damage caused to the Property in accordance with clause 30.12(b); and
- (e) assign to the Landowner all of the Developer's interest in any Approvals obtained by the Developer in respect of the Property, and any Intellectual Property including without limitation Design Documentation in connection with the Works in respect of the Property.

28.8 Landowner's rights after termination

If this deed is terminated or repudiated arising from breach of this deed by the Developer, the Landowner:

- (a) may seek all other available legal and equitable remedies; and
- (b) will be entitled to require the Developer to immediately hand over to the Landowner all copies of:
 - (i) any documents provided by the Landowner to the Developer;
 - (ii) all Design Documentation prepared by the Developer to the date of termination (whether complete or not); and
 - (iii) any other documents or information in existence that is to be provided to the Landowner under this deed.

28.9 Look forward

If both of the following are satisfied:

- (a) the Landowner (acting reasonably) at any time during the carrying out of the Project forms the opinion that the Developer will not (or will not be able to) satisfy one or more of the Minimum Requirements by the Sunset Date; and
- (b) the Landowner obtains an opinion from the Independent Certifier that confirms that, in the opinion of the Independent Certifier, there is no reasonable likelihood that the Developer will satisfy one or more of the Minimum Requirements by the Sunset Date,

the Landowner may give to the Developer written notice of the Landowner's intention to terminate this deed subject to clause 28.10 (**Notice of Intent**).

28.10 Look forward remediation

- (a) If the Landowner gives the Developer a Notice of Intent under clause 28.9, the Developer may within 10 Business Days after the Notice of Intent, provide to the Landowner a draft remediation plan, which must include:
 - (i) the steps being or to be taken by the Developer to ensure that:
 - (A) the Minimum Requirements are satisfied by the Sunset Date; and
 - (B) each Milestone is achieved by the relevant Milestone Date;
 - (ii) each task to be undertaken, the date by which each task is to be completed and the additional resources and personnel (if applicable) to be applied to ensure that the steps in clause 28.10(a)(i) are implemented; and
 - (iii) the timeline for implementing the steps in clause 28.10(a)(i), which must be appropriate and must not, in any circumstance, exceed the Sunset Date.
- (b) As soon as practical after the Developer provides a draft remediation plan under clause 28.10(a), the parties must liaise and consult, in good faith, with a view to agreeing the draft remediation plan, including any amendments to that plan, within

10 Business Days after the Developer has provided the draft remediation plan under clause 28.10(a) (or such longer period of time as the parties may agree).

- (c) The Developer must comply with the remediation plan agreed by the parties under clause 28.10(b).
- (d) The Landowner may terminate this deed if the Landowner issues a Notice of Intent under clause 28.10 and one or more of the following occurs:
 - (i) the Developer does not provide to the Landowner a draft remediation plan which complies with clause 28.10(a) within the 10 Business Day period referred to in that clause;
 - (ii) the parties do not agree the draft remediation plan within the 10 Business Day period referred to in clause 28.10(b) (or such longer period of time as the parties may agree); or
 - (iii) the Developer does not comply with the remediation plan agreed by the parties under clause 28.10(b).
- (e) The Landowner's rights under this clause are without prejudice to the Landowner's other rights under this deed.

28.11 Preservation of rights

Nothing in this clause 28 will prejudice the right of the Landowner to exercise any right or remedy (including recovering damages) which it may have where the Developer breaches (including repudiates) this deed.

28.12 No merger

This clause 28 is an essential provision of this deed and the rights and obligations of the Landowner and the Developer survive termination of this deed.

29. Preparation of Subdivision Documents

29.1 Obligation to Subdivide

- (a) The Developer must develop, amend and finalise the Draft Plans of Subdivision in accordance with this clause 29.
- (b) Prior to the Date of Practical Completion, the Developer must procure:
 - (i) a Subdivision of the Property to consolidate the existing lots into one Lot in accordance with this clause 29; and
 - (ii) a Subdivision of the Property, further dividing the consolidated lot into the Developer Social Housing Dwellings and the Landowner Social Housing Dwellings.

29.2 Subdivision Documents

- (a) The Developer must promptly and at its Cost procure the preparation of the Subdivision Documents for consent by the Landowner.
- (b) The Developer must engage a registered surveyor to prepare:

- (i) a draft plan of Subdivision of the Property to consolidate the existing lots into one Lot generally in accordance with the Draft Plans of Subdivision;
- (ii) a draft strata plan for the Developer Social Housing Dwellings and the Landowner Social Housing Dwellings generally in accordance with the Draft Plans of Subdivision, and
- (iii) Subdivision Documents in respect of the plans referred to in clauses 29.2(b)(i) and 29.2(b)(ii),

each of which complies with:

- (iv) the Agreed Development Consent;
- (v) the Final Design Documentation;
- (vi) all Laws; and
- (vii) the requirements of this deed,

and which is prepared in a form proposed for registration at NSW LRS.

(c) The Developer must prepare:

- (i) a building management statement for the building within the Project which contains both Developer Social Housing Dwellings and Landowner Social Housing Dwellings;
- (ii) any applicable Strata Documents; and
- (iii) any other associated instrument creating easements, covenants or restrictions,

each of which complies with:

- (iv) the Agreed Development Consent;
- (v) the Final Design Documentation;
- (vi) all Laws; and
- (vii) the requirements of this deed,

and which is prepared in a form proposed for registration at NSW LRS.

29.3 Consultation with Landowner and Authority

The Developer must:

- (a) consult and discuss with the Landowner and all other relevant Authorities and pay all due regard to any reasonable comments or suggestions that the Landowner or any relevant Authority may make in respect of:
 - (i) the proposed provisions and contents of each Subdivision Document;
 - (ii) terms and conditions the relevant Authority indicates are required as a matter of policy or as a matter of Good Industry Practice; and
 - (iii) any conditions any relevant Authority indicates may be imposed on any consent if consent is required.

- (b) unless otherwise agreed, keep the Landowner fully informed of the consultations referred to in clause 29.3(a) and:
 - (i) give the Landowner at least 5 Business Days' notice of any proposed meeting with the relevant Authority for the purpose of discussing any Subdivision Document;
 - (ii) give the Landowner the opportunity of attending the meeting;
 - (iii) keep the Landowner informed of any such meeting including providing to the Landowner minutes of such meeting; and
 - (iv) provide such other information as the Landowner may request of the meeting and the content, agreement or resolutions of the meeting.

29.4 Procedure for Landowner's consent

The procedure for the Landowner's consent to the Subdivision Documents is the same procedure set out in clause 9 as if "Application" was substituted for Subdivision Documents.

29.5 Changes to the Subdivision Documents

Once the Subdivision Documents have been approved by the Landowner, the Developer must not make any changes to the Subdivision Documents without obtaining the prior written consent of the Landowner, acting reasonably.

29.6 Registration of Subdivision Documents

Prior to the Date of Practical Completion, the Developer must procure the registration of the Subdivision Documents consented to by Landowner at the NSW LRS to:

- (a) Subdivide the Property by consolidating the existing lots into one Lot; and
- (b) further Subdivide the Property by registering a plan creating separate lots for the Developer Social Housing Dwellings and Landowner Social Housing Dwellings.

30. Access to the Property

30.1 Not used

30.2 Access to the Property for Early Works and the Initial Investigations and Early Works Licence

The Landowner grants to the Developer, and the Developer accepts the grant of, a right to access the Property on the terms and conditions set out in the Initial Investigations and Early Works Licence in Attachment 11.

30.3 Access to the Property for Construction Works and the Construction Works Licence

The Landowner grants to the Developer, and the Developer accepts the grant of, a right to access the Property on the terms and conditions set out in the Construction Works Licence in Attachment 11.

30.4 Licence in contract only

The licences granted pursuant to clauses 30.2 and 30.3 do not and will not grant to the Developer any right, title or interest of any nature whatsoever in the Property and the rights of the Developer and all persons claiming through it under these licences rest in contract only.

30.5 Developer's indemnity

The Developer indemnifies the Landowner against Claims and Loss which the Landowner may incur or suffer in connection with the Developer or any Developer's Associate accessing the Property under this clause 30 including any:

- (a) Loss of or damage to any property owned, managed or controlled by the Landowner including the Property;
- (b) Loss or damage arising from any Claims brought against the Landowner; and
- (c) liability to pay compensation in respect of any injury or loss of life whatsoever and including injury or loss of life incurred by any of the Associates,

provided that such liability to indemnify will be reduced proportionately to the extent that any loss or damage is caused or contributed to by a negligent act or omission of the Landowner or the Landowner's Associates.

30.6 Developer's risk

During the Access Period the Developer:

- (a) uses and occupies the Property at the sole risk of the Developer; and
- (b) releases the Landowner from all Claims and Loss in connection with any damage, Loss, injury or death to or of any person or property on or near the Property in connection with the Developer accessing the Property under this clause 30, except to the extent that the same is caused or contributed to by a negligent act or omission of the Landowner or the Landowner's Associates.

30.7 Public Liability insurance

- (a) Before having access to the Property pursuant to any licence granted pursuant to this clause 30, the Developer must effect and maintain a public liability policy of insurance, which names the Developer and notes the interest of the Landowner, for liabilities to third parties.
- (b) The public liability insurance policy must also cover the Developer's liability for Loss of or damage to property (including the Property) and the death of or injury to any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance).
- (c) The Developer must ensure that each of the Developer's consultants and subcontractors (and any major sub subcontractors) entering onto the Property maintain similar insurance with an adequate amount of cover relevant to their duties in connection with the Property or the Approved Purposes.
- (d) The public liability policy of insurance must be for an amount in respect of any one occurrence not less than [REDACTED] (or such other reasonable amount nominated from time to time by the Landowner having regard to current market practice in the construction industry in Sydney for developments of the scale of the Project) and must be effected with an insurer approved by the Landowner (acting reasonably).

30.8 Workers' compensation

The Developer must effect and maintain at all times a workers' compensation policy as required by Law against any liability, Loss, Claim or proceedings, whether arising by virtue of any statute relating to workers' compensation or employer's liability or at common law for any persons employed by the Developer that access and use the Property under this clause 30. The Developer must ensure that each of the Developer's consultants and subcontractors (and any major sub subcontractors) entering onto the Property maintain similar insurance.

30.9 Contract works insurance

- (a) Without limiting or affecting the Developer's other obligations under this deed, before commencement of any Works the Developer must (at its own Cost) effect and maintain or cause to be effected and maintained a contract works insurance policy or procure that a contract works insurance policy is effected and maintained which complies with clause 30.9(b).
- (b) The policy must cover the usual risks insured under a contract works insurance policy, and be subject to the usual terms and conditions that apply to such a policy. Subject to those limitations, the risks covered under the policy shall include loss, damage or destruction (including, without limitation, by earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage) and resulting in loss or damage of:
 - (i) the Works (including any associated temporary works);
 - (ii) all materials and things (including plant and equipment used in the execution of the relevant Works) brought onto or in storage on the Property by the Developer, the Developer's Associates, for the purpose of the Project other than constructional plant and equipment of contractors and subcontractors unless it is to be incorporated into the relevant Works;
 - (iii) the improvements associated with the relevant Works; and
 - (iv) all materials and things associated with the relevant Works in storage off Property or in transit to the Property, occurring during the period when the Developer is responsible for their care including under the terms of any maintenance or defects liability conditions.
- (c) The insurance cover referred to in this clause 30.9 must be for an amount not less than the full value of the relevant Works and the improvements associated with those Works on a full reinstatement and replacement basis (including Costs of demolition, removal of debris, materials, a suitable contingency amount and an amount necessary to cover fees to all consultants).

30.10 Evidence of insurance

Throughout the Access Period, in connection with policies it takes out under this clause 30, the Developer must:

- (a) pay each premium before it is due for payment;
- (b) not allow any insurance to lapse or vary or cancel any policy without the Landowner's consent;
- (c) notify the Landowner promptly if a policy is cancelled or if an event occurs which could prejudice or give rise to a claim under a policy; and

- (d) produce on request by the Landowner evidence of the policies required under this clause 30.

30.11 No relationship of landlord and tenant

Nothing in this clause 30 gives the Developer any right as a tenant of the Property, creates a relationship of landlord and tenant between the parties or creates any interest in the Property in favour of the Developer.

30.12 Make good

The Developer must at the end of the Access Period:

- (a) remove from the Property anything brought onto the Property by or on behalf of the Developer; and
- (b) make good any damage caused to the Property by the Developer or the Developer's Associates, or the Approved Purposes and reinstate the Property to the same condition as the Property was at the beginning of the Access Period to the extent that any change to the condition of the Property was caused by the Developer accessing the Property under this clause 30, but excluding any works to the Property properly carried out in accordance with this deed.

31. Liability and reliance

31.1 Disclosure

The Landowner specifically discloses the Disclosure Materials which the Developer acknowledges that the Developer has reviewed and inspected.

31.2 No liability

This deed is entered into on the condition that:

- (a) neither the Landowner or any Associate of the Landowner accepts any duty of care for the provision of any Disclosure Materials to the Developer or to any Associate of the Developer, or to any other person;
- (b) neither the Landowner or the Landowner's Associates are under any liability to the Developer or the Developer's Associates, or to any other person if, for any reason, the Disclosure Materials are or become inaccurate, incomplete or misleading in any way;
- (c) neither the Developer, nor any Associates of the Developer, have any right or remedy against the Landowner or the Landowner's Associates in relation to the Disclosure Materials, and cannot bring a Claim relating to the Disclosure Materials;
- (d) the documents included in the Disclosure Materials have been provided by the Landowner to the Developer from numerous sources. Neither the Landowner nor the Landowner's Associates make any express or implied guarantee, representation or warranty as to the accuracy, currency, reliability status or completeness of any of the contents of the Disclosure Materials and no responsibility is assumed by the Landowner or the Landowner's Associates in respect of the contents of, or omissions from, the Disclosure Materials or that the Disclosure Materials have been verified or audited;
- (e) the Disclosure Materials have not been verified or audited; and

- (f) if the Developer has obtained services, advice or assistance from any of the consultant firms issuing the Disclosure Materials or the authors of the Disclosure Materials or any of their respective Associates, the Developer agrees that the entities or persons from whom the services, advice or assistance may be sought by the Developer are not acting as Associates of the Landowner.

31.3 No reliance

In accessing the Disclosure Materials the Developer acknowledges to the Landowner that:

- (a) the Disclosure Materials are made available solely to the Developer to assist the Developer in deciding whether the Developer is sufficiently interested in the Property to proceed with the development of the Property and the Project and the acquisition of the completed Developer Social Housing Dwellings;
- (b) the Disclosure Materials may not be appropriate for some persons and it is not possible for the Landowner, or any of the Landowner's Associates to have regard to the objectives, situation and needs of each person who reads or uses the Disclosure Materials;
- (c) the Developer has sought or has had the opportunity of seeking appropriate professional advice in reviewing the Disclosure Materials and evaluating whether or not to enter into this deed and purchase the Developer Social Housing Dwellings;
- (d) the Developer has relied upon its own enquiries as to the accuracy or completeness of any of the Disclosure Materials;
- (e) neither the Landowner nor any of the Landowner's Associates will be liable for any Loss of any kind incurred by the Developer as a result of the Developer's reliance on the Disclosure Materials;
- (f) the Developer is satisfied:
 - (i) by taking and relying upon the Developer's own independent advice in relation to the Disclosure Materials;
 - (ii) by examination as to the state of repair and condition, quality, quantity and absence from defect of the Property;
 - (iii) by examination as to the location in which the Property is situated;
 - (iv) as to the value of the Property from the Developer's own independent and other valuations;
 - (v) as to any Approvals granted by any Authority in relation to the Property; and
 - (vi) by the Developer's own examination, of the present and future economic feasibility, viability and economic return of the Property; and
- (g) the Developer has entered into this deed in reliance upon those examinations, inspections, inquiries, valuations, reports and perusals referred to in clause 31.3(f) only and not upon any statements, warranties, conditions or representations of any kind to be made by or on behalf of the Landowner other than any warranties deemed to have been given by Law and which cannot be excluded by agreement.

31.4 Rights against third parties

Nothing in this clause 31 affects any rights the Developer may have against consultants who have provided reports contained in the Disclosure Materials where the Developer has been given or otherwise obtained the benefit of reliance on those reports.

32. Disclosure by Landowner

32.1 Statutory requirements

The Landowner may make information and documents in relation to the Developer's Development available:

- (a) in accordance with and to the extent required by the *Government Sector Finance Act 2018* (NSW);
- (b) to respond to a call for papers made by the State Parliament of NSW or other similar body with jurisdiction over the Landowner;
- (c) so far as possible, on a commercial-in-confidence basis;
- (d) subject to the Developer's rights at Law, the Landowner may publish information concerning the information and documents in relation to the Developer's Development in accordance with:
 - (i) the NSW Government Procurement Policy Framework (August 2021 – updated 25 August 2021) as amended, supplemented, varied or replaced from time to time; and
 - (ii) the NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013 – updated September 2017) as amended, supplemented, varied or replaced from time to time; and
- (e) under the GIPA Act, the Landowner has obligations to:
 - (i) publicly disclose government information that is open access information (as that term is defined in the GIPA Act), including by publishing this deed on the Landowner's contract registers; and
 - (ii) release information pursuant to an access application unless the Landowner is reasonably satisfied that there is an overriding public interest against disclosure.

32.2 Disclosure

Notwithstanding the other provisions of this clause 32, in relation to any disclosure under clause 32.1(e) the parties acknowledge that:

- (a) (before the proposed date of disclosure) the Landowner will use reasonable endeavours to notify the Developer Parties of any proposed disclosure of commercially sensitive information by the Landowner under the GIPA Act in accordance with clause 32.1(e);
- (b) following notification by the Landowner under clause 32.2(a), the Landowner will use reasonable endeavours to consult with the Developer Parties before disclosing the commercially sensitive information;
- (c) if, following:

- (i) notification by the Landowner under clause 32.2(a); or
- (ii) consultation between the parties in accordance with clause 32.2(b),
the Developer objects to disclosure of some or all of the commercially sensitive information, the Developer must provide details of any such objection within 5 Business Days after the date the Developer received notification from the Landowner or the date on which the consultation process concluded (as relevant); and
- (d) the Landowner must take reasonable account of any objection received from the Developer pursuant to clause 32.2(c) in determining whether the commercially sensitive information identified by the Developer should be disclosed, and further acknowledging that:
 - (i) the Landowner will be under no obligation to accept or otherwise agree to the objections; and
 - (ii) the Developer may have rights to seek a review of the decision by the Landowner to disclose any commercially sensitive information.

32.3 Overriding statutory obligations

The parties acknowledge and agree that nothing in this clause 32 will limit or otherwise affect the discharge of the Landowner's obligations to disclose information in connection with the Developer's Development as required by any Law including but not limited to the GIPA Act.

33. Confidentiality

33.1 Keep confidential

Except as required by Law or in the circumstances set out in clause 32 or by the Australian Stock Exchange where a party has a practice of notifying the Australian Stock Exchange or where the information is in the public domain, the commercial terms of this deed must be kept confidential by the parties and may only be released to:

- (a) the parties' professional advisers, insurers and financiers on condition that they agree to be bound by the terms of this clause;
- (b) Mission Australia ACN 000 002 522, Mission Australia Housing ACN 003 683 261, Mission Australia Housing Holdings Limited ACN 677 039 486 and other Related Bodies Corporate of the Developer (where Related Bodies Corporate takes the meaning given to the term 'related body corporate' in the Corporations Act);
- (c) the Builder, or any prospective Builder or early contractor involvement contractor in connection with the Project and provided that the recipient enters into a confidentiality agreement with the Developer on usual market terms prior to receiving the terms of this deed; or
- (d) other persons with the prior written consent of the other party which must not be unreasonably withheld or delayed.

33.2 Media

Without limiting clause 33.1, the Developer must not issue a press or media release or make or cause to be published any public statements in relation to the Project without the prior written approval of the Landowner.

34. Dealings

34.1 Dealings by the Developer

Prior to the expiration of the Defects Period, the Developer:

- (a) must not transfer, assign, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this deed in any way;
- (b) must not transfer or assign the Developer Social Housing Dwellings (once transferred to the Developer) until either:
 - (i) all of the Developer's obligations under this deed and the Contract are satisfied; or
 - (ii) this deed is terminated; and
- (c) must ensure that:
 - (i) a person does not become or cease to be the Parent of the Developer; or
 - (ii) a change in Control of the Developer does not take place,

without the written consent of the Landowner (such approval not to be unreasonably withheld).'

34.2 Landowner's right to assign

The Landowner may at any time assign, transfer or vest its interest in this deed and the Property to an Authority provided that the assignee:

- (a) has the necessary powers to enable it to perform the Landowner's obligations under this deed and the CHP Management Agreement;
- (b) carries on the Landowner's role under this deed and the CHP Management Agreement; and
- (c) provides access to the Property following the assignment, and can otherwise provide or procure:
 - (i) the provision of title to the Developer Social Housing Dwellings following the Date of Practical Completion in accordance with this deed and the Contract; and
 - (ii) the grant of the lease in accordance with the CHP Management Agreement.

34.3 Landowner's undertaking

The Landowner undertakes to the Developer that, from the date of this deed until termination of this deed, the Landowner will not:

- (a) enter into a contract to sell the Property or grant an option to purchase the Property without the consent of the Developer; or
- (b) enter into any agreement granting or agreeing to grant a lease, licence or other occupancy right (including any extension) over the Property that is inconsistent with the rights given to the Developer under this deed, except as permitted by this deed.

35. Dispute resolution

35.1 Notice of dispute

If a dispute between the Developer and Landowner arises in connection with this deed or its subject matter, then the disputing party must give to the other a notice identifying and providing details of the subject of the dispute.

35.2 Continuing to perform obligations

All parties to this deed must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter the subject of the dispute (while the dispute remains on foot), unless the party requiring that matter to be completed indemnifies the other party against reasonable Costs and Losses suffered in completing that matter if the dispute is not resolved in favour of the indemnifying party. This clause does not limit the right of any party to recover damages (including damages for any delay or other loss and associated Costs) if the matter the subject of the dispute is resolved in favour of that party or the other party withdraws its requirement that the dispute be resolved.

35.3 Parties to consult

Any dispute between the parties arising in connection with this deed or its subject matter must first be referred to the Executive Director, Commercial Division of the Landowner and the managing director of the Developer to meet within 10 Business Days after the date of the notice for resolution of the dispute and undertake genuine and good faith negotiations with a view to resolving the dispute. If these persons cannot agree within 10 Business Days then the remaining provisions of this clause 35 apply.

35.4 Further steps required before proceedings

Any dispute between the parties arising in connection with this deed or its subject matter must, (except in the case of an application for an interlocutory injunction), as a condition precedent to the commencement of litigation, first be the subject of mediation by a mediator agreed by the disputing parties and, if the parties cannot agree within 10 Business Days, by a mediator appointed by the Resolution Institute.

35.5 Disputes for expert determination

If the mediation referred to in clause 35.4 has not resulted in settlement of the dispute within 25 Business Days after commencement of the mediation (or such longer period as the disputing parties may agree), then:

- (a) if Landowner and the Developer agree that the matter should be determined by an expert, the matter must be referred to expert determination in accordance with clause 35.7; or
- (b) if Landowner and the Developer do not agree within 10 Business Days that the matter should be determined by an expert, either of them may commence litigation.

35.6 Choice of expert

A dispute to be referred to an expert in accordance with clause 35.5 must be determined by an independent expert of at least 10 years immediate past experience in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within 5 Business Days after the matter is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field and, if the parties cannot agree as to the relevant field within 10 Business Days, by an expert appointed by the Resolution Institute.

35.7 Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest; and
- (b) must not have a significantly greater understanding of one disputing party's business or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform each disputing party before being appointed of the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of each disputing party.

35.8 Agreement with expert

Each disputing party must enter into an agreement with the expert appointed under clause 35.7 setting out the terms of the expert's engagement (including the time within which the expert must make the determination) and the expert's fees.

35.9 Directions to expert

In reaching a determination in respect of a dispute under clause 35.5, the expert must give effect to the intent of the parties entering into this deed and the purposes of this deed.

35.10 Role of expert

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless each disputing party is present;
- (d) on receipt of a written submission from one disputing party ensure that a copy of such submission is given promptly to the other disputing party;
- (e) take into consideration all documents, information and other material which the disputing parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);

- (g) issue a draft certificate stating the expert's intended determination giving each disputing party 10 Business Days to make further submissions;
- (h) issue an Expert's Final Certificate stating the expert's determination having had regard to any further submissions received under clause 35.10(g); and
- (i) act with expedition with a view to issuing the Expert's Final Certificate as soon as practicable.

35.11 Complying with directions of expert

The disputing parties must comply with all directions given by the expert in relation to the resolution of the dispute, and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

35.12 Expert may commission reports

Subject to obtaining the prior consent of each disputing party, the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. Provided that each disputing party has consented to the Costs, each disputing party must indemnify the expert for the Cost of those advisers or consultants in accordance with clause 35.18.

35.13 Expert may convene meetings

The expert will hold a meeting with all the disputing parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

35.14 Meeting not a hearing

The parties agree that a meeting under clause 35.13 is not a hearing and is not an arbitration.

35.15 Confidentiality of information

The parties agree, and each disputing party must procure that each of the mediator and expert agrees as a condition of its appointment:

- (a) subject to clause 35.15(b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 35.15(a); or
 - (ii) if required by Law to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

35.16 Confidentiality in proceedings

The parties must keep confidential and must not disclose, rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts shall have been otherwise discoverable in judicial or arbitral proceedings.

35.17 Final determination of expert

The parties agree that the final determination by an expert is final and binding upon them.

35.18 Expert's Costs

If any expert does not award Costs, the disputing parties must each pay an equal share of the expert's Costs incurred from the date of appointment to the date of the final determination.

35.19 Expert generally not liable

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to them in any respect in connection with the carrying out of the expert's functions in accordance with this deed.

35.20 Acknowledgement

The parties acknowledge and agree that any disputes under this deed and any other Transaction Document which relate to the same subject matter will be dealt with together.

35.21 No merger

This clause 35 is an essential provision of this deed and the rights and obligations of the parties survive termination of this deed.

36. GST

36.1 Definitions and interpretation

In this clause 36:

- (a) **Supplier** means a party who makes a supply whether on behalf of another entity or otherwise;
- (b) a reference to a supply is to a supply under this deed;
- (c) a reference to GST payable by the Supplier includes any GST payable by the representative member of any GST group of which the Supplier (or the entity on whose behalf the Supplier is acting) is a member;
- (d) a reference to a party includes the representative member of a GST group of which that party is member;

- (e) a reference to input tax credits includes input tax credits to which an entity is notionally entitled under Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled; and
- (f) unless the context indicates otherwise, words and phrases that are defined in the GST Act have the same meaning as in that Act except that:
 - (i) **"GST"** has the meaning given in clause 1.1;
 - (ii) **Recipient** means a party who provides or is liable to provide consideration under this deed for a supply; and
 - (iii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply for the purposes of this clause.

36.2 Consideration

For the purpose of determining the GST consequences of the supplies contemplated under this deed, the parties provide the following:

- (a) the parties agree that the consideration for the Developer undertaking all of its activities under this deed is:
 - (i) the Landowner's payment of the Landowner Capital Advance to the Developer;
 - (ii) the Landowner's transfer to the Developer of the freehold title to the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities in accordance with the Contract; and
 - (iii) the Landowner's grant of a lease to the Developer in respect of the completed Landowner Social Housing Dwellings in accordance with the CHP Management Agreement.
- (b) The parties agree that the consideration for the Landowner's supplies to the Developer of:
 - (i) the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities to the Developer in accordance with the Contract; and
 - (ii) the agreement to grant the lease of the Landowner Social Housing Dwellings to the Developer in accordance with the CHP Management Agreement,

together with the Landowner's agreement to provide the Landowner Capital Advance, is the Developer undertaking all of its activities under this Deed.
- (c) The parties agree that the GST-inclusive market value of the freehold title to the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities is:
 - (i) the proportion of the Development Costs (plus GST), outlined in the Development Costs Apportionment Statement, which relate to the development of the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities; less

- (ii) an amount equal to a proportion of the Landowner Capital Advance, to be determined by the Landowner at the Date of Practical Completion.
- (d) The parties agree that the GST-inclusive market value of the grant of the lease of the Landowner Social Housing Dwellings to the Developer in accordance with the CHP Management Agreement is:
 - (i) the proportion of the Development Costs (plus GST), outlined in the Development Costs Apportionment Statement, which relate to the development of the Landowner Social Housing Dwellings and the Landowner's Proportion of the Public Areas and Shared Facilities; less
 - (ii) an amount equal to the Landowner Capital Advance, less the amount determined by the Landowner in accordance with clause 36.2(c)(ii).
- (e) The parties agree that the GST-inclusive market value of the Developer's supply of all its activities under this deed to the Landowner is equal to the Development Costs (plus GST).

36.3 GST-exclusive consideration

Unless otherwise expressly stated, all amounts referred to in this deed, including amounts used to determine a payment to be made by one party to the other (other than an amount referred to in clause 36.4) are exclusive of GST (**GST Exclusive Consideration**).

36.4 Reimbursements

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

36.5 GST payable

If GST becomes payable by a Supplier in respect of any supply (**GST Amount**):

- (a) the Recipient must pay to the Supplier on demand an amount equal to that GST;
- (b) the Supplier must issue a valid tax invoice to the Recipient in respect of that supply;
- (c) the GST Amount payable under clause 36.5(a) must be paid at the same time as the first part of any consideration is provided for that supply or on receipt of a valid tax invoice for the supply to which the additional amount relates, whichever is the later; and
- (d) to the extent that GST Withholding under the Contract does not allow for the set off of the payment of GST Amounts in accordance with clause 36.6, the applicable GST Amount (or relevant part thereof) payable by the Landowner to the Developer will be paid within 5 Business Days of:
 - (i) the receipt of the GST Withholding credit equal to the GST Withholding Amount in the Landowner's bank account; or
 - (ii) when the Landowner otherwise obtains the benefit of the GST Withholding credit in accordance with section 18-60 of Schedule 1 to the *Taxation Administration Act 1953* (Cth).

36.6 Tax invoices

- (a) At the Date of Practical Completion, the Landowner will issue a tax invoice to the Developer in respect of its supplies of:

- (i) the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities in accordance with the Contract; and
 - (ii) the grant of a lease to the Developer in respect of the completed Landowner Social Housing Dwellings in accordance with the CHP Management Agreement.
- (b) At the Date of Practical Completion, the Developer will issue a tax invoice to the Landowner in respect of the remaining consideration payable for its activities under this deed.

36.7 Adjustment events

Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this deed, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 36.5(a), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable. The Supplier must issue an adjustment note to the Recipient as soon as practicable after becoming aware of the adjustment event.

36.8 No merger

This clause 36 is an essential provision of this deed and the rights and obligations of the Landowner and the Developer survive termination of this deed.]

37. Foreign resident capital gains withholding payments

- (a) As at the date of this deed, in accordance with section 14-225 of Schedule 1 to the *Taxation Administration Act 1953* (Cth), the Landowner declares that it is and will be an Australian tax resident, for the period which commences on the date of this deed and expires on the date that is 6 months after the date of this deed.
- (b) The Landowner may from time to time provide to the Developer updated declarations of Australian tax residency for the purpose of and in accordance with section 14-225 of Schedule 1 to the *Taxation Administration Act 1953* (Cth).

38. Foreign Acquisitions and Takeovers Act

- (a) The Developer represents and warrants to the Landowner that the Developer's acquisition of the Developer Social Housing Dwellings and the Developer's Proportion of the Public Areas and Shared Facilities are not within the scope of the *Foreign Acquisitions and Takeovers Act 1975* and is not examinable by the Foreign Investment Review Board.
- (b) The Developer is liable for and indemnifies the Landowner against all liability, Loss, Costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against the Landowner) arising from or incurred in connection with the Developer's representation in clause 38(a) being incorrect or misleading at any time and the Developer being in breach of its warranty in that clause.

39. Notices

39.1 Form

Unless expressly stated otherwise, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the sender and marked for attention as set out in clause 39.4.

39.2 Deemed receipt

A document under or relating to this deed is taken to be served:

- (a) if left at the delivery address referred to in clause 39.4;
- (b) if served by prepaid post:
 - (i) within Australia to an Australian postal address, 3 Business Days after posting; or
 - (ii) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, 10 Business Days after posting;
- (c) if served by email, immediately once sent unless a notification of delivery failure is received within 120 minutes of the email being sent; or
- (d) if served on a day which is not a Business Day or after 5.00 pm on a Business Day, at 9:00 am on the next Business Day.

39.3 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the party's current email address for notices.

39.4 Particulars for delivery of notices

- (a) The particulars for delivery of notices are as set out in Items 2 and 3 of the Reference Schedule.
- (b) Each party may change its particulars for delivery of notices by notice to the other party.

40. General

40.1 Governing law

This deed is governed by and must be construed according to the Law applying in New South Wales.

40.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 40.2(a).

40.3 Amendments

This deed may only be varied by a deed signed by or on behalf of each party.

40.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

40.5 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

40.6 No representation or reliance

- (a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

40.7 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

40.8 Stamp duties

The Developer:

- (a) must pay all stamp duties and any related fines and penalties in respect of this deed, the performance of this deed and each transaction effected by or made under this deed;

- (b) indemnifies each other party against any liability arising from failure to comply with clause 40.8(a); and
- (c) is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

40.9 Indemnities

- (a) The Developer is liable for and indemnifies the Landowner against all liability, Loss, Costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis determined without taxation, assessment, or similar process and whether incurred by or awarded against the Landowner) arising from or incurred in connection with:
 - (i) a breach of this deed;
 - (ii) any caveat the Developer lodges on the title to the Property; or
 - (iii) a breach of any warranty of the Developer in this deed.
- (b) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (d) A party must pay on demand any amount it must pay under an indemnity in this deed.

40.10 Not used

40.11 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

40.12 Interest

- (a) Without prejudicing the Landowner's other rights and remedies, the Developer must pay interest to the Landowner at the Default Rate on any money due but unpaid to the Landowner on the due date for payment (including interest payable under this clause 40.12).
- (b) Interest under this clause 40.12 will accrue at the Default Rate on the outstanding amount and shall be calculated daily from (and including) the due date to the date the Landowner receives full payment of the amount both.
- (c) Interest payable under this clause 40.12 which is not paid when due for payment may (at any time before payment) be added to the overdue amount by the Landowner monthly on the last day of each calendar month.
- (d) The right to require payment of interest under this clause 40.12 is without prejudice to any other rights and remedies of the Landowner in respect of any failure to make any payment due and payable under this deed.
- (e) Failure by the Landowner to promptly claim interest payable under this clause does not waive the Landowner's right to claim that interest.

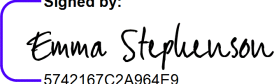
40.13 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
 - (ii) insertion of the person's name on to the deed; or
 - (iii) use of a stylus or touch finger on a touch screen to sign the deed;
 - (iv) provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the deed;
 - (v) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
 - (vi) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

Executed as a deed.

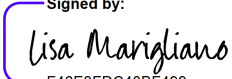
If applicable, where a party signs electronically, that party confirms that by signing below, it has complied with the Corporations Act, and specifically, that the technology neutral requirements pursuant to section 110A of the Corporations Act have been met.

Signed for and on behalf of **Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales ABN 36 433 875 185:**

Signed by:

5742167C2A964E9...
Signature of witness

Emma Stephenson

Name of witness (please print)

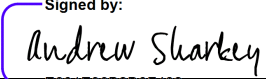
Signed by:

F48E3FDC49BF499...
Signature of Authorised Officer

Lisa Marigliano
Name of above signatory

5/11/2025
Date of signing

Executed by the Developer specified below in accordance with section 127 of the Corporations Act 2001 (Cth):

MAH Harbour Drive Limited
69 668 668 586
ABN/ACN of company

Signed by:

E601E36B2D0F482...
Signature of director

Andrew Sharkey
Full name of director

Signed by:

84C8FE42D2D24AA...
Signature of company secretary/director

Keith Gavin
Full name of company secretary/director

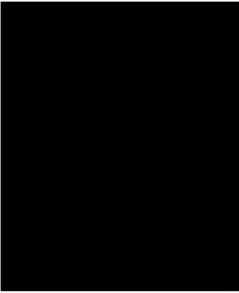
Attachment 1 Preliminary Period Conditions

Part 1 – Developer Preliminary Period Conditions

Preliminary Period Conditions for which the Developer is responsible:

Preliminary Period Condition	Detail	Party with right to waive (if any)	Applicable Preliminary Period Conditions Deadline
Commencement of Early Works	The condition in clause 3 of Part A – Amendments to Common Terms of the HAFFF Project Agreement for the purpose of item 23 in Part B of the Project Schedule is satisfied or waived in accordance with the HAFFF Project Agreement.	Not applicable	
Site Investigations by Developer – Contamination <i>(excludes investigations completed by the Landowner under the Landowner Preliminary Period Conditions)</i>	The Developer has: 1 completed and provided to the Landowner a complete copy of the results of the Site Investigations – Contamination in respect of the Property; and 2 provided to the Landowner a certificate from an Expert approved by the Landowner and jointly appointed by the Landowner and the Developer specifying the Certified Estimated Remediation Costs and certifying in favour of the Landowner that the Certified Estimated Remediation Costs are accurate, and the Certified Estimated Remediation Costs have been approved by the Landowner in accordance with clause 3.4, agreed by the parties pursuant to clause 3.4 (if the Landowner rejects the relevant Certified Estimate) or resolved by dispute resolution (if referred to dispute resolution in the circumstances provided for in clause 3.4).	Landowner	
Site Investigations – Other	The Developer has: 1 completed and provided to the Landowner a complete copy of the results of the Site Investigations – Other in respect of the Property; and 2 provided to the Landowner a certificate from an Expert approved by the Landowner and jointly appointed by the Landowner and the Developer specifying the Certified Estimated Site Condition Costs and certifying in favour of the Landowner	Landowner	

Preliminary Period Condition	Detail	Party with right to waive (if any)	Applicable Preliminary Period Conditions Deadline
	that the Certified Estimated Site Condition Costs are accurate, and the Certified Estimated Site Condition Costs have been approved by the Landowner in accordance with clause 3.4, agreed by the parties pursuant to clause 3.4 (if the Landowner rejects the relevant Certified Estimate) or resolved by dispute resolution (if referred to dispute resolution in the circumstances provided for in clause 3.4).		
Building Contract	The Developer has: 1 selected a preferred builder in accordance with this deed who has bid a lump sum price for the Project; 2 obtained the approval of the Landowner to the Builder and the terms of the proposed Building Contract for the Project in accordance with this deed; 3 provided a copy of the Building Contract (signed by all parties) to the Landowner; and 4 executed and procured the approved Builder to execute a Builder's Side Deed in respect of the Building Contract as required by the Landowner and/or the Financiers.	Not applicable	
Construction Certificate	The Developer has obtained a Construction Certificate in respect of the Final Design Documentation for the Works (which Construction Certificate is consistent with the Agreed Development Consent)	Not applicable	
Finance	The Developer has: 1 provided to the Landowner evidence satisfactory to the Landowner that finance with respect to the carrying out and completion of the Project by the Developer is available for draw down by the Developer; 2 execute and procure the Financier to execute a Financier's Side Deed in respect of this deed and the CHP Management Agreement with the Landowner and provided the	Not applicable	

Preliminary Period Condition	Detail	Party with right to waive (if any)	Applicable Preliminary Period Conditions Deadline
	executed Financier's Side Deed to the Landowner; and 3 execute and procure the Financier and Housing Australia (as Concessional Loan lender) to execute a Financier Tripartite Deed with the Landowner and any secured subordinated debt provider and provided the executed Financier Tripartite Deed to the Landowner; and 4 satisfied (other than by waiver) all conditions precedent to drawdown under the financing documents in respect of the Project (except that any condition precedent to drawdown under the financing documents that requires financial close under this deed to have occurred does not need to be satisfied or waived under the financing document for the purpose of this Preliminary Period Condition).		
Submission of the Application (as defined under the HAFFF Project Agreement) to Housing Australia	The Developer has completed and submitted the Application (as defined under the HAFFF Project Agreement) to Housing Australia.	Not applicable	
Novation of the HAFFF Project Agreement to the Developer	The Landowner novates the HAFFF Project Agreement to the Developer.	Not applicable.	

Part 2 – Landowner Preliminary Period Conditions

Preliminary Period Conditions for which Homes NSW is responsible:

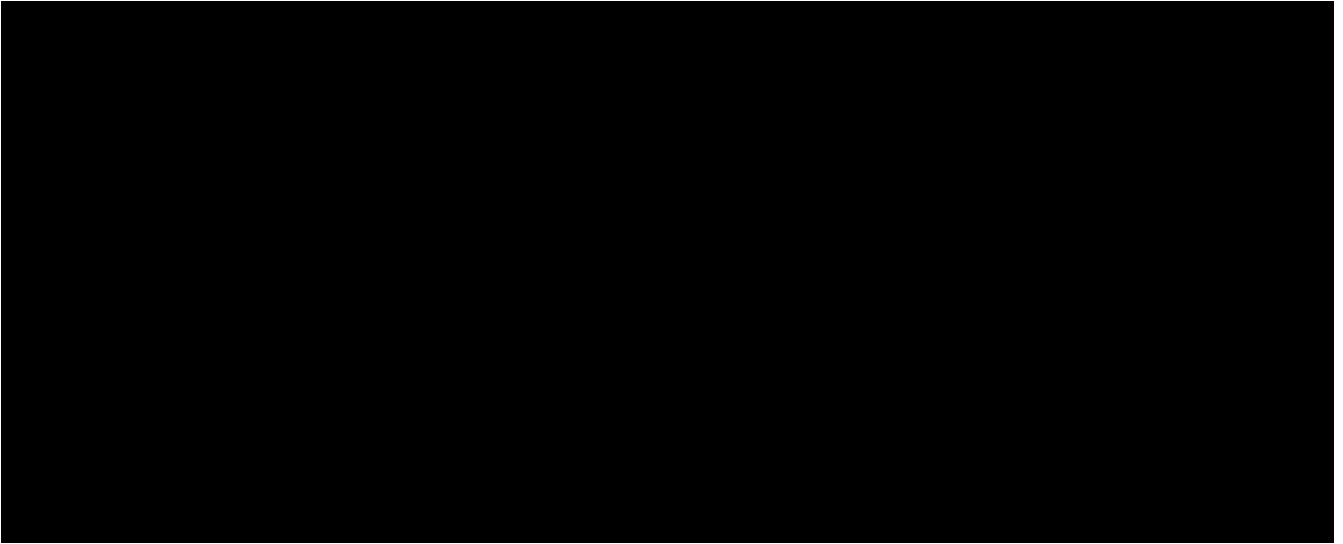
Preliminary Period Condition	Detail	Party with right to waive (if any)	Applicable Preliminary Period Conditions Deadline
Consent to the Application (as defined under the HAFFF Project Agreement)	The Landowner consents to and executes the Application (as defined under the HAFFF Project Agreement).	Not applicable.	
Surrender of Existing Lease	The Existing Lease has been validly surrendered on terms acceptable to the Landowner and the lessee.	Not applicable	
Site Investigations by the Landowner – Contamination	The Landowner has completed and provided to the Developer a complete copy of the results of the Site Investigations – Contamination in respect of the Property.	Developer	
Agreed Development Consent	The Landowner has obtained an Agreed Development Consent for the Property.	Not applicable	

Part 3 – Preliminary Period Termination Triggers

The Preliminary Period Termination Triggers are as follows:

Preliminary Period Termination Trigger	Party with right to terminate
Developer Preliminary Period Conditions not satisfied	Landowner
Landowner Preliminary Period Conditions not satisfied	The Developer and/or the Landowner
Landowner Capital Advance amount	The Landowner and/or the Developer

Attachment 2 – Milestones



Attachment 3 - Proposed Contract for the Developer Social Housing Dwellings

Contract for the sale and purchase of land 2022 edition

TERM	MEANING OF TERM	NSW DAN:
vendor's agent	N/A	
co-agent	N/A	
vendor	Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales ABN 36 433 875 185	
vendor's solicitor	Herbert Smith Freehills Kramer Level 34, ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000 GPO Box 4227, Sydney NSW 2000 / DX 361 Sydney NSW	Phone: +61 2 9225 5000 Fax: +61 2 9322 4000 Ref: 82799361
date for completion	See Special Condition 33.1	
land (address, plan details and title reference)	[Drafting note – Address and title details of the Developer Social Housing and any Developer's Proportion of the Public Areas and Shared Facilities to be completed when plans are available]	
improvements	☒ VACANT POSSESSION ☐ subject to existing tenancies ☐ HOUSE ☐ garage ☐ carport ☐ home unit ☐ carspace ☐ storage space ☐ none ☐ other:	
attached copies	☒ documents in the List of Documents as marked or numbered: other documents:	

A real estate agent is permitted by legislation to fill up the items in this box in a sale of residential property.

inclusions	☐ air conditioning ☐ clothes line ☐ fixed floor coverings ☐ range hood ☐ blinds ☐ curtains ☐ insect screens ☐ solar panels ☐ built-in wardrobes ☐ dishwasher ☐ light fittings ☐ stove ☐ ceiling fans ☐ EV charger ☐ pool equipment ☐ TV antenna ☐ other:
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exclusions

purchaser **MAH Harbour Drive Limited ABN 69 668 668 586**
 purchaser's solicitor **Herbert Smith Freehills Kramer**
 Level 34, ANZ Tower, 161 Castlereagh Street, Sydney NSW 2000
 GPO Box 4227, Sydney NSW 2000 / DX 361 Sydney NSW

price
 deposit
 balance

contract date (if not stated, the date this contract was made)

Where there is more than one purchaser ☐ JOINT TENANTS
☐ tenants in common ☐ in unequal shares, specify: _____

GST AMOUNT (optional) The price includes GST of: \$

buyer's agent

Note: Clause 20.15 provides "Where this contract provides for choices, a choice in BLOCK CAPITALS applies unless a different choice is marked."

SIGNING PAGE

VENDOR	PURCHASER												
Signed by _____ Refer to the Signing Page _____ Vendor _____ Vendor	Signed by _____ Refer to the Signing Page _____ Purchaser _____ Purchaser												
VENDOR (COMPANY)	PURCHASER (COMPANY)												
Signed by _____ in accordance with s127(1) of the Corporations Act 2001 by the authorised person(s) whose signature(s) appear(s) below: <table border="0"> <tr> <td>_____ Signature of authorised person</td><td>_____ Signature of authorised person</td></tr> <tr> <td>_____ Name of authorised person</td><td>_____ Name of authorised person</td></tr> <tr> <td>_____ Office held</td><td>_____ Office held</td></tr> </table>	_____ Signature of authorised person	_____ Signature of authorised person	_____ Name of authorised person	_____ Name of authorised person	_____ Office held	_____ Office held	Signed by _____ in accordance with s127(1) of the Corporations Act 2001 by the authorised person(s) whose signature(s) appear(s) below: <table border="0"> <tr> <td>_____ Signature of authorised person</td><td>_____ Signature of authorised person</td></tr> <tr> <td>_____ Name of authorised person</td><td>_____ Name of authorised person</td></tr> <tr> <td>_____ Office held</td><td>_____ Office held</td></tr> </table>	_____ Signature of authorised person	_____ Signature of authorised person	_____ Name of authorised person	_____ Name of authorised person	_____ Office held	_____ Office held
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_____ Office held	_____ Office held												
_____ Signature of authorised person	_____ Signature of authorised person												
_____ Name of authorised person	_____ Name of authorised person												
_____ Office held	_____ Office held												

Choices

Vendor agrees to accept a **deposit-bond** ☐ NO ☐ yes

Nominated Electronic Lodgment Network (ELN) (clause 4): PEXA

Manual transaction (clause 30) ☐ NO ☐ yes
(if yes, vendor must provide further details, including any applicable exception, in the space below):

Tax information (the parties promise this is correct as far as each party is aware)

Land tax is adjustable ☒ NO ☐ yes
GST: Taxable supply ☐ NO ☒ yes in full ☐ yes to an extent
 Margin scheme will be used in making the taxable supply ☒ NO ☐ yes

This sale is not a taxable supply because (one or more of the following may apply) the sale is:

- ☐ not made in the course or furtherance of an enterprise that the vendor carries on (section 9-5(b))
- ☐ by a vendor who is neither registered nor required to be registered for GST (section 9-5(d))
- ☐ GST-free because the sale is the supply of a going concern under section 38-325
- ☐ GST-free because the sale is subdivided farm land or farm land supplied for farming under Subdivision 38-O
- ☐ input taxed because the sale is of eligible residential premises (sections 40-65, 40-75(2) and 195-1)

Purchaser must make a **GSTRW payment** (GST residential withholding payment) ☐ NO ☒ yes (if yes, vendor must provide details)

If the details below are not fully completed at the contract date, the vendor must provide all these details in a separate notice at least 7 days before the date for completion.

GSTRW payment (GST residential withholding payment) – details

Frequently the supplier will be the vendor. However, sometimes further information will be required as to which entity is liable for GST, for example, if the supplier is a partnership, a trust, part of a GST group or a participant in a GST joint venture.

Supplier's name:

Supplier's ABN:

Supplier's GST branch number (if applicable):

Supplier's business address:

Supplier's representative:

Supplier's contact phone number:

Supplier's proportion of **GSTRW payment**: \$

If more than one supplier, provide the above details for each supplier.

Amount purchaser must pay – price multiplied by the **GSTRW rate** (residential withholding rate): \$

Amount must be paid: ☐ AT COMPLETION ☐ at another time (specify):

Is any of the consideration not expressed as an amount in money? ☐ NO ☐ yes

If "yes", the GST inclusive market value of the non-monetary consideration: \$

Other details (including those required by regulation or the ATO forms):

List of Documents

General ☐ 1 property certificate for the land ☐ 2 plan of the land ☐ 3 unregistered plan of the land ☐ 4 plan of land to be subdivided ☐ 5 document to be lodged with a relevant plan ☐ 6 section 10.7(2) planning certificate under Environmental Planning and Assessment Act 1979 ☐ 7 additional information included in that certificate under section 10.7(5) ☐ 8 sewerage infrastructure location diagram (service location diagram) ☐ 9 sewer lines location diagram (sewerage service diagram) ☐ 10 document that created or may have created an easement, profit à prendre, restriction on use or positive covenant disclosed in this contract ☐ 11 <i>planning agreement</i> ☐ 12 section 88G certificate (positive covenant) ☐ 13 survey report ☐ 14 building information certificate or building certificate given under <i>legislation</i> ☐ 15 occupation certificate ☐ 16 lease (with every relevant memorandum or variation) ☐ 17 other document relevant to tenancies ☐ 18 licence benefiting the land ☐ 19 old system document ☐ 20 Crown purchase statement of account ☐ 21 building management statement ☐ 22 form of requisitions ☐ 23 <i>clearance certificate</i> ☐ 24 land tax certificate Home Building Act 1989 ☐ 25 insurance certificate ☐ 26 brochure or warning ☐ 27 evidence of alternative indemnity cover Swimming Pools Act 1992 ☐ 28 certificate of compliance ☐ 29 evidence of registration ☐ 30 relevant occupation certificate ☐ 31 certificate of non-compliance ☐ 32 detailed reasons of non-compliance	Strata or community title (clause 23 of the contract) ☐ 33 property certificate for strata common property ☐ 34 plan creating strata common property ☐ 35 strata by-laws ☐ 36 strata development contract or statement ☐ 37 strata management statement ☐ 38 strata renewal proposal ☐ 39 strata renewal plan ☐ 40 leasehold strata - lease of lot and common property ☐ 41 property certificate for neighbourhood property ☐ 42 plan creating neighbourhood property ☐ 43 neighbourhood development contract ☐ 44 neighbourhood management statement ☐ 45 property certificate for precinct property ☐ 46 plan creating precinct property ☐ 47 precinct development contract ☐ 48 precinct management statement ☐ 49 property certificate for community property ☐ 50 plan creating community property ☐ 51 community development contract ☐ 52 community management statement ☐ 53 document disclosing a change of by-laws ☐ 54 document disclosing a change in a development or management contract or statement ☐ 55 document disclosing a change in boundaries ☐ 56 information certificate under Strata Schemes Management Act 2015 ☐ 57 information certificate under Community Land Management Act 2021 ☐ 58 disclosure statement - off the plan contract ☐ 59 other document relevant to off the plan contract Other ☒ 60 Special Conditions
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HOLDER OF STRATA OR COMMUNITY SCHEME RECORDS – Name, address, email address and telephone number

Not Applicable

Special conditions to the contract for the sale and purchase of the land dated [#].

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33. Interpretation

33.1 Definitions

In this contract, unless expressed to the contrary:

Associate means officers, employees, consultants, contractors, advisers and agents.

Authority means, in respect of a particular context or circumstance, each Federal, State or Local Government, semi-Government, quasi-Government or other body or authority, statutory or otherwise, including any court or tribunal, having jurisdiction and responsibility in respect of that context or circumstance.

Builder's Side Deed has the same meaning as in the Project Delivery Deed.

Claim includes any right, debt, cause of action, action, liability or obligation (whether actual, contingent or prospective), claim, entitlement, damages, proceeding, remedy, suit, demand, Costs or Loss of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent and whether at Law (including in tort, for negligence or otherwise), in equity, under statute or contract or otherwise.

Completion Date means the date that is 10 business days after the Date of Practical Completion.

Contamination means that land or water affected by:

- (a) a substance, gas, liquid, chemical, mineral or other physical or biological matter that is at a concentration which is above the concentration normally present in that land or water in the vicinity and presents a risk of harm to human health or the environment; or
- (b) a material or compound controlled, prohibited or regulated from time to time by any Environmental Law, including asbestos.

Control in relation to a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

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

Cost includes a cost, charge, expense, liability, outgoing, fee, levy or impost and includes expenses incurred in connection with external advisers and consultants.

Date of Practical Completion has the meaning given to it under the Project Delivery Deed.

Default Rate means 10% per annum calculated on a daily basis.

Development has the same meaning as in the Project Delivery Deed.

Encumbrance means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above.

Environment includes all aspects of the surroundings of human beings.

Environmental Law means:

- (a) all laws relating to land or water use, town planning, the environment, noise, development, construction or structures, coastal protection, water catchment, soil conservation, nature conservation, heritage conservation, human health, Contamination, radiation, pollution, waste disposal or land management;
- (b) all conditions of all consents, approvals, authorisations, licences and permits issued under any law in clause (a); and
- (c) regulations or any order, guideline, gazettal, notice, direction or requirement of any government, statutory or other body or Authority in relation to these matters.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW), as amended from time to time.

Final Design Documentation has the same meaning as in the Project Delivery Deed.

Financier's Side Deed has the same meaning as in the Project Delivery Deed.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Hazardous Substance means any substance which would or might reasonably be expected to cause a state of danger to human beings, property or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Information Documents means:

- (a) all the information or documentation made available to the purchaser or its Associates by or on behalf of the vendor, or otherwise obtained by or on behalf of the purchaser prior to the making of this contract, including the documents set out in the index attached at Schedule 2;
- (b) all documents attached to this contract; and
- (c) all information that is available on the public record, including all information which would have been disclosed or revealed at the date of this contract or at a time immediately before completion by searches of any public register.

Insolvency Event means the happening of any of these events:

- (a) a body corporate is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the vendor);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 40 business days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that body corporate, which:
 - (i) is preparatory to or could result in any of (a), (b) or (c) above; or
 - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate;
- (e) as a result of the operation of section 459(F)(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand;
- (f) a body corporate is, or it makes a statement from which the vendor reasonably deduces that the body corporate is, the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the vendor reasonably deduces it is so subject);
- (g) a body corporate is otherwise unable to pay its debts when they fall due;
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the Law of any jurisdiction.

Law includes all statutes, regulations, by-laws, ordinance and other delegated legislation and any rule of common law or equity from time to time.

Loss means all losses (including, loss of profit, loss of expected savings, opportunity costs, loss of business (including loss or reduction of goodwill) and damage to reputation), liabilities, damages, costs, charges and expenses and includes tax.

NSW LRS means the New South Wales Land Registry Services.

Parent of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
 - (i) controls the composition of the board of directors of the first mentioned person; or
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or

- (iii) holds or has a beneficial interest in more than one-half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the purchaser, its interest in this document is property subject to that trust, a person who:
 - (i) controls the right to appoint the trustee;
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units; or
 - (iii) holds or has a beneficial interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of the purchaser, its interest in this document is property subject to that trust, a person who:
 - (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - A. appoint or change the trustee; or
 - B. give directions to the trustee; or
 - C. vary the constituent document of the trust; or
 - D. appoint or remove beneficiaries; or
 - E. decide to whom any distribution is made or the amount of any distribution.
- (d) A person is also a **Parent** of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.

Project Delivery Deed means the project delivery deed between the vendor and the purchaser in relation to the development of the Property dated **[insert]**.

price means the amount on the front page of this contract.

printed clauses means clauses 1 to 32 of the Contract for the Sale and Purchase of Land – 2022 Edition published by the Law Society of NSW and Real Estate Institute of NSW.

property means the land described on the front page of this contract.

Receiver includes a receiver or manager or receiver and manager.

Resolution Institute means Resolution Institute or, if no such organisation exists, then the President of the Law Society of New South Wales.

Security Document has the same meaning given to it in the Project Delivery Deed.

Site Conditions means any physical conditions and characteristics of, on, above, below or over the surface or about the property or their surroundings including:

- (a) natural and artificial conditions (including heritage and archaeological issues);
- (b) physical and structural conditions, including buildings, improvements, partially completed structures and in ground works;
- (c) all improvements, including any artificial things, foundations, existing utility services and other structures installed by or on behalf of the vendor or others;
- (d) ground water, ground water hydrology and the effects of any dewatering;
- (e) Contamination or the existence of any Hazardous Substance or thing or waste;
- (f) topography of the property, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered on, above, below or over the surface or about the property;
- (g) geological, geotechnical and subsurface conditions or characteristics including mine subsidence;
- (h) systems and facilities, above or below ground and the location of all facilities with which any service or related item of infrastructure including water, electricity, gas, telephone, drainage, sewerage and electronic communications and systems are connected;
- (i) the Environment, water, weather or atmospheric or climatic conditions, or the effects of the Environment, water, weather or atmospheric or climatic conditions (including rain, surface water run-off and drainage, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather, atmospheric and climatic conditions); and
- (j) all defects (latent and patent) and all dilapidation and infestation latent conditions.

Transaction Documents means:

- (a) this contract;
- (b) the Financier's Side Deed;
- (c) the Builder's Side Deed;
- (d) the Project Delivery Deed; and
- (e) each Security Document.

Trigger Event has the meaning given to it in the Project Delivery Deed.

33.2 Construction

Unless expressed to the contrary:

- (a) words in the singular include the plural and vice versa;
- (b) if a word or phrase is defined its other grammatical forms having corresponding meanings;

- (c) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, body corporate and a government or statutory body or Authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) “includes” is a reference without limitation;
 - (iv) time is to local time in New South Wales;
 - (v) “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (vi) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
 - (vii) anything (including any amount) is a reference to the whole or any part of it;
 - (viii) a group of things or persons is a reference to any one or more of them; and
 - (ix) a day in this contract (other than a business day) means a day, whether or not a Saturday, Sunday, public or religious holiday; and
- (d) if a period of time is specified to start from a certain day, the period is to be calculated exclusive of that day.

33.3 Inconsistency

If there is any inconsistency between the printed clauses of this contract this contract and these additional clauses, the additional clauses prevail to the extent of that inconsistency.

33.4 Rules of construction

No rule of construction will apply to disadvantage the vendor on the basis that the vendor puts forward this contract.

33.5 Severability

If a clause of this contract is illegal or unenforceable, it may be severed without affecting the enforceability of other clauses in this contract.

33.6 Purchaser's Associates

If this contract prohibits the purchaser from doing a thing, then:

- (a) the purchaser must do everything necessary to ensure that the purchaser's Associates do not do that thing; and
- (b) the purchaser must not authorise or cause any person to do that thing.

33.7 Order of precedence

In the event of any inconsistency, ambiguity or discrepancy between the various documents comprising or referred to in this contract:

- (a) the interpretation which prescribes or requires the highest standard, quality or quantum will take precedence; and
- (b) where the inconsistency, ambiguity or discrepancy is not resolved by the application of the principle in clause 33.7(a), the order of precedence will be as follows:
 - (i) the Project Delivery Deed;
 - (ii) this contract; and
 - (iii) the Final Design Documentation.

34. Amendments to printed form of contract

The printed clauses in the printed form of this contract are amended as follows:

- (a) clause 1 is amended by:
 - (i) deleting the definitions of 'GST Act' and 'GST rate';
 - (ii) replacing the definition of deposit holder with "the vendor";
- (b) clauses 2 and 3 are deleted;
- (c) clause 4.8 is deleted;
- (d) the first line of clause 10.1 is replaced with:

"10.1 The purchaser cannot make a claim, requisition, delay completion, rescind or terminate in respect of:";
- (e) clauses 10.1.8 and 10.1.9 are amended by inserting after the word "substance", the words "absence or existence";
- (f) clause 10.2 is amended by adding the words "make a claim, requisition, delay completion," before the word "rescind";
- (g) clause 13 is deleted;
- (h) clause 14.1 is amended by inserting after "usage charges" the words "including any charges for stormwater and trade waste";
- (i) clause 17.2.2 is amended by replacing "provisions" with "substance";
- (j) not used;
- (k) clause 18.7 is amended by inserting at the beginning "Subject to clause 19.2.2";
- (l) clause 20.8 is replaced with:

"Rights under clauses 11, 14, and 17 continue after completion, whether or not other rights continue";
- (m) clause 20.12 is deleted;

- (n) clause 22 is deleted;
- (o) clause 23.13 is amended by deleting the words “at least 7 days”;
- (p) clause 23.14 is deleted; and
- (q) clauses 24, 28, and 29 are deleted.

35. GST

35.1 Definitions and interpretation

In this clause 35:

- (a) Terms or expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*, unless the context indicates otherwise, have the same meaning as in the GST Act.
- (b) Any reference to a party includes the representative member of a GST group of which that party is a member.
- (c) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) is treated as a separate supply for the purposes of this clause 35.
- (d) Unless the contrary intention appears:
 - (i) **ATO** means the Australian Taxation Office.
 - (ii) **GST** includes amounts defined as “GST” under the GST Act and:
 - A. amounts payable on account of a notional liability under Division 177 of the GST Act; and
 - B. “GST equivalents” payments under the Intergovernmental Agreement Implementation (GST) Act 2000 (NSW) (or similar payments under corresponding legislation of any other State or Territory);
 - (iii) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
 - (iv) **Input Tax Credits** includes amounts defined as “input tax credits” in the GST Act and amounts to which an entity is notionally entitled under Division 177 of the GST Act;
 - (v) **Recipient** has the meaning given to that term in the GST Act, but also includes a party who provides or is liable to provide consideration for a supply under this contract.
 - (vi) **TAA** means the *Taxation Administration Act 1953* (Cth).

35.2 Reimbursement

Any amount payable under this contract that is calculated by reference to an amount paid or incurred by a *party* is limited to the total amount less any input tax credit to which that *party* is entitled for the acquisition to which the amount relates.

35.3 Additional amount of GST payable

If GST becomes payable on any supply made by the Supplier under or in connection with this contract:

- (a) any amount payable or consideration to be provided under any provision of this contract (other than this clause 35) for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (GST Amount);
- (c) the GST Amount is payable at the same time as any other consideration is to be provided for that supply;
- (d) unless otherwise agreed, the margin scheme will not be applied; and
- (e) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 35.3(b).

35.4 Variation

If the GST paid or payable on a supply varies from the additional amount the Recipient paid under clause 35.3 in respect of that supply, the Supplier must give a refund or credit to the Recipient of, or the Recipient must pay the Supplier on demand, the amount of that variation, as appropriate. Any refund, credit or payment, under this clause 35.4 is taken to be a credit, refund or payment of the additional amount payable under clause 35.3. Where there is an adjustment event, the Supplier must issue an adjustment note as soon as practicable after becoming aware of the adjustment event.

35.5 ATO Rulings

The vendor will rely on all public rulings issued by the Commissioner of Taxation (**Commissioner**) in relation to the supplies and acquisitions involved in the property

35.6 Not used

35.7 No merger

This clause 35 does not merge on completion of this contract.

36. GST Withholding

[Drafting note – this clause is to be considered on a Project-by-Project basis. On the basis that the premises will be newly constructed on what is currently vacant land, GST withholding should be applicable.]

Clause 36 otherwise details the processes, forms and notifications that will otherwise be required to comply with the GSTRW regime, including suggested timings for relevant steps.]

36.1 The meanings of the terms used in this clause 36 are set out below:

- (a) The definitions of terms in clause 35 are also adopted in this clause **36**.
- (b) **Commissioner** means the Commissioner of Taxation.

- (c) **GST Withholding Amount** means the amount that the purchaser is required to withhold on account of GST from the price and pay to the Commissioner as notified by the vendor in the GST Withholding Notice.
- (d) **GST Withholding Notice** means notification required under section 14-255 of the Withholding Law to be made on or before the making of the supply which states whether or not the purchaser is required to make a payment on account of GST to the Commissioner and, if so, the amount of the payment.
- (e) **Purchaser Settlement Date Confirmation Form** means the form that the purchaser must lodge with the Commissioner to confirm settlement has occurred having previously lodged the Purchaser Withholding Notification Form.
- (f) **Purchaser Withholding Notification Form** means the notification that the purchaser is required to make in the approved form under section 16-150(2) of the Withholding Law.
- (g) **Withholding Law** means Schedule 1 of the TAA.

36.2 If, at least 10 business days before the Completion Date, the vendor gives the purchaser a GST Withholding Notice specifying that the purchaser is required to make a payment on account of GST to the Commissioner, then the purchaser must pay the GST Withholding Amount from the price otherwise payable to the vendor on the settlement date in accordance with this clause 36.

36.3 If clause 36.2 applies, at least 5 business days before the settlement date the purchaser must provide to the vendor:

- (a) evidence of having lodged a Purchaser Withholding Notification Form with the Commissioner; and
- (b) the purchaser's payment reference number and lodgement reference number with respect to the Purchaser Withholding Notification Form.

36.4 Subject to clause 36.5:

- (a) the purchaser must at completion, give the vendor a bank cheque drawn in favour of the Commissioner for the GST Withholding Amount; and
- (b) the vendor undertakes to give the bank cheque to the Commissioner, together with the reference details provided by the purchaser under clause 36.3.

36.5 Clause 36.4 does not apply where completion occurs electronically through an electronic online conveyancing facility and the GST Withholding Amount is paid to the Commissioner through that facility.

36.6 If payment of the GST Withholding Amount does not occur in accordance with either of clauses 36.4 or 36.5, the vendor may delay Settlement until the next Business Day after the day on which:

- (a) payment of the GST Withholding Amount has occurred; or
- (b) the vendor receives the price due on completion.

- 36.7** The purchaser must lodge the Purchaser Settlement Date Confirmation Form with the Commissioner on or before the Completion Date and provide evidence of having lodged the form with the vendor at completion.
- 36.8** If the purchaser cannot provide evidence to the vendor at completion of having lodged the Purchaser Settlement Date Confirmation Form, then in addition to any damages under clause 36.9, the purchaser must give to the vendor at completion a written declaration that:
- (a) confirms that the details provided under clause 36.3 are true and correct; and
 - (b) authorises the vendor and the vendor's solicitor to complete and lodge, on behalf of the purchaser, the Purchaser Settlement Date Confirmation Form.
- 36.9** The purchaser indemnifies the vendor against all Loss that may be incurred by the vendor arising from or in connection with a breach by the purchaser of this clause 36.
- 36.10** If the purchaser pays the GST Withholding Amount in accordance with this clause 36, the vendor will not be entitled to delay completion or refuse to settle.

37. Foreign Acquisitions and Takeovers Act

- (a) The purchaser represents and warrants to the vendor that the purchaser's acquisition of the *property* is not within the scope of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and is not examinable by the Foreign Investment Review Board.
- (b) The purchaser is liable for and indemnifies the vendor against all liability, Loss, Costs and expenses (including legal fees, Costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against the vendor) arising from or incurred in connection with the purchaser's representation in clause 37 being incorrect or misleading at any time and the purchaser being in breach of its warranty in that clause.

38. Notice to complete

38.1 Completion

The vendor and the purchaser must complete this contract by 3.00 pm on the Completion Date.

38.2 Notice to complete

- (a) If completion does not occur in accordance with clause 38.1, a party is who is ready, willing and able to complete, may serve a notice:
 - (i) requiring the other party to complete this contract not less than 14 days after the date of service of the notice; and
 - (ii) making time of the essence.
- (b) The parties acknowledge that for the purposes of clause 38.2(a), the period of 14 days is sufficient time to complete this contract.
- (c) The vendor is not regarded as unable, not ready or unwilling to complete because of the existence of a charge on the property in respect of any rates or taxes.

- (d) The vendor is entitled to serve a notice to complete on the purchaser despite the existence of a charge on the property in respect of any rates and taxes at the time the notice is served or at any time after.

38.3 Withdrawal of notice to complete

Without affecting any other right, a party who serves a notice to complete may:

- (a) at any time prior to its expiry, withdraw the notice by further notice to the other party; and
- (b) issue a further notice to complete.

39. Interest

39.1 Payment of interest

Without prejudice to any other rights of the vendor, if the price or any other amount payable by the purchaser to the vendor under this contract, is not paid to the vendor when it is due, then the purchaser must pay to the vendor interest at the Default Rate on the unpaid amounts from and including the due date to and including the date on which they are paid in full.

39.2 Essential term

Payment of interest pursuant to this clause 39 is an essential term of this contract and the vendor is not obliged to complete this contract unless the interest due at completion has been paid.

40. Not used

41. Not used

42. Not used

43. Not used

44. Not used

45. Vendor's rights after termination

45.1 Vendor's rights after termination

If this contract is terminated or repudiated on grounds arising from breach of this contract by the purchaser, the vendor:

- (a) may seek all other available legal and equitable remedies; and
- (b) will be entitled to require the purchaser to immediately hand over to the vendor all copies of:
 - (i) any documents provided by the vendor to the purchaser;
 - (ii) any other documents or information in existence that is to be provided to the vendor under this document.

45.2 Preservation of rights

Nothing in this clause 45 will prejudice the right of the vendor to exercise any right or remedy (including recovering damages) which it may have where the purchaser breaches (including repudiates) this document.

45.3 No merger

This clause 45 is an essential provision of this contract and the rights and obligations of the vendor and the purchaser continue beyond completion.

46. Not used

47. The property

47.1 Acceptance

The purchaser acknowledges and agrees that:

- (a) pursuant to the Project Delivery Deed, the purchaser was responsible for the planning and construction of any improvements on the property and remains responsible for any defects or omissions in the construction and therefore accepts the condition of any such improvements;
- (b) the vendor is released from all responsibility and liability in connection with the construction or condition of any improvements on the property; and
- (c) it accepts the property and improvements in their condition and state of repair as at the contract date.

47.2 Condition of the property

The purchaser represents and warrants that, because of the purchaser's own inspection and enquiries, the purchaser:

- (a) is satisfied as to the nature, quality, condition and state of repair of the property;
- (b) is satisfied with and accepts the Site Conditions;
- (c) is satisfied about the purposes for which the property may be used; and
- (d) accepts the property and its improvements as is and where is and in its current state and condition and subject to:
 - (i) any latent or patent defects in the property; and
 - (ii) any affectations by proposals of any Authorities.

47.3 Activities in adjoining properties

- (a) The purchaser acknowledges the vendor has no rights or powers in relation to areas outside the property.
- (b) The purchaser must make its own enquiries in relation to the development of other development projects or other adjoining land outside the property and acknowledges that the vendor has made no representations or warranties in relation to the development of any other land outside the property.

47.4 No reliance

The purchaser acknowledges that it has relied on its own independent advice, examinations and valuations and has not relied on any information, representation or warranty given or made by or on behalf of the vendor, including any information, representation or warranty concerning:

- (a) title to the property;
- (b) the terms of any documents relating to any Encumbrances affecting the property;
- (c) the boundaries or area of the property;
- (d) the neighbourhood of the property;
- (e) the suitability of the property for any particular use;
- (f) its rights and powers relating to the property;
- (g) the services and utilities to the property;
- (h) whether improvements on the property comply with any relevant statutes, regulations and local laws;
- (i) the condition of the property;
- (j) any financial return or income to be derived from the property;
- (k) the Site Conditions; or
- (l) the applicability of any environmental liability to the property.

47.5 Lack of repair

The purchaser must not make any objection or Claim, or refuse or delay payment of the price, because of the repair or condition of the property on the Completion Date.

47.6 No warranties or representations as to state of repair

The purchaser may not make any Claim, requisition, delay completion, terminate or rescind because of:

- (a) any matter referred to in clause 47.1 and 47.2;
- (b) the nature, quality, condition of the property and the extent of its compliance or otherwise with the Building Code of Australia;
- (c) the nature, location, availability or non-availability of the services or defects in the services;
- (d) any notice or order issued pursuant to any statute or an Authority necessitating the doing of work or expenditure of money on or in relation to the property or any path or road adjoining the property;
- (e) subject to Part 4 Division 7 of the *Conveyancing Act 1919* (NSW), any loss or damage to or reduction in the value of the property, that occurs between the contract date and the Completion Date;

- (f) the property not complying with the requirements of any permits or other approvals issued by any competent Authority or with any statute, by law or other requirements of any competent Authority;
- (g) the property not being fit or suitable for any particular purpose;
- (h) whether any licences, Approvals, permits, consents, certificates or authorities required for the construction or use of the property are held by the vendor;
- (i) any deficiency in its area or measurements of the property;
- (j) any failure to comply with a Law relating to the property or a requirement of any Authority;
- (k) improvements being built over a service for the property; or
- (l) rainwater downpipes being connected to a sewer.

48. Environmental matters

48.1 Vendor disclosure

The vendor discloses that:

- (a) the property may be affected by Contamination;
- (b) there may be non-compliance with Environmental Laws in relation to the property; and
- (c) work may be required to investigate and remove Contamination from the property or remediate the property.

48.2 Purchaser not to make a requisition

Subject to Part 4 of the *Conveyancing Act 1919* (NSW), the purchaser releases the vendor and may not make any Claim, requisition, delay completion, terminate or rescind because of any matter referred to in this clause 48.

48.3 Indemnity

From completion the purchaser releases, indemnifies and keeps indemnified the vendor from any liability, Loss or Cost arising out any of the matters referred to in this clause 48.

48.4 No merger

This clause 48 is an essential term of this contract and the rights and obligations of the vendor and purchaser continue beyond completion.

49. Liability and reliance

49.1 Disclosure

The vendor specifically discloses the Information Documents which the purchaser acknowledges that the purchaser has reviewed and inspected.

49.2 No liability

This contract is entered into on the condition that:

- (a) neither the vendor or any Associate of the vendor accepts any duty of care for the provision of any Information Documents to the purchaser or to any Associate of the purchaser, or to any other person;
- (b) neither the vendor or the vendor's Associates are under any liability to the purchaser or the purchaser's Associates, or to any other person if, for any reason, the Information Documents are or become inaccurate, incomplete or misleading in any way;
- (c) the purchaser, nor any Associates of the purchaser, have any right or remedy against the vendor or the vendor's Associates in relation to the Information Documents, and cannot bring a Claim relating to the Information Documents;
- (d) the documents included in the Information Documents have been provided by the vendor to the purchaser from numerous sources. Neither the vendor or the vendor's Associates make any express or implied guarantee, representation or warranty as to the accuracy, currency, reliability status or completeness of any of the contents of the Information Documents and no responsibility is assumed by the vendor or the vendor's Associates in respect of the contents of or omissions from the Information Documents or that the Information Documents have not been verified or audited; and
- (e) if the purchaser has obtained services, advice or assistance from any of the consultant firms issuing the Information Documents or the authors of the Information Documents or any of their respective Associates, the purchaser agrees that the entities or persons from whom the services, advice or assistance may be sought by the purchaser are not acting as Associates of the vendor.

49.3 No reliance

In accessing the Information Documents the purchaser acknowledges to the vendor that:

- (a) the Information Documents were not prepared for the benefit of the purchaser;
- (b) the Information Documents are made available solely to the purchaser to assist the purchaser in deciding whether the purchaser is sufficiently interested in the property to proceed with the purchase of the property;
- (c) the Information Documents may not be appropriate for some persons and it is not possible for the vendor, or any of the vendor's Associates to have regard to the objectives, situation and needs of each person who reads or uses the Information Documents;
- (d) the purchaser has sought or has had the opportunity of seeking appropriate professional advice in reviewing the Information Documents and evaluating whether or not to purchase the property;
- (e) the purchaser has not relied on any disclosure contained in the Information Documents as to a representation of fact or as to any further matter, but has satisfied itself as to the correctness of the Information Documents by independent investigations and has relied upon its own enquiries as to the accuracy or completeness of any of the Information Documents;
- (f) any reliance placed by the purchaser on the Information Documents will be at the purchaser's own risk and neither the vendor or any of the vendor's Associates will be liable for any loss of any kind;

- (g) the purchaser is satisfied:
 - (i) by taking and relying upon the purchaser's own independent advice in relation to the Information Documents;
 - (ii) by physical examination and inspection as to the state of repair and condition, quality, quantity and absence from defect of the property;
 - (iii) by physical examination as to the location in which the property is situated;
 - (iv) as to the value of the property from the purchaser's own independent advice and other valuations;
 - (v) as to any approvals granted by any Authority in relation to the property; and
 - (vi) by the purchaser's own examination, of the present and future economic feasibility, viability and economic return of the property; and
- (h) the purchaser has entered into this contract in reliance upon those examinations, inspections, inquiries, valuations, reports and perusals referred to in clause 49.3(g) only and not upon any statements, warranties, conditions or representations of any kind to be made by or on behalf of the vendor other than any warranties deemed to have been given by law and which cannot be excluded by agreement.

49.4 Purchaser not to make requisition

The purchaser must not make any Claim, requisition, delay completion, terminate or rescind because of any matter disclosed in this clause 49 or any matter referred to or disclosed in any document attached to this contract.

50. Purchaser's warranties and indemnity

50.1 Purchaser's warranties

The purchaser represents and warrants that:

- (a) the purchaser has not relied on or been induced to enter into this contract by any representation or warranty (including those concerning the potential or present yield, use or development of the property) made by the vendor, its agent or solicitor;
- (b) the purchaser has relied entirely on its own independent investigations and enquiries about the property in entering into this contract;
- (c) the purchaser has obtained its own independent professional advice on the nature of the property and its permitted uses and the purchaser's rights and obligations under this contract;
- (d) the purchaser was not introduced to the property or the vendor by any person other than the vendor's agent;
- (e) the purchaser has full legal capacity and power to enter into, exercise its rights and perform the purchaser's obligations under this contract;
- (f) the purchaser's financial statements and all other accounts, financial statements and reports which the purchaser has delivered to the vendor under this contract have been prepared in accordance with all applicable Laws, generally accepted accounting principles consistently applied, and give a true and fair view of the

financial condition of the purchaser and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial period then ended;

- (g) in entering into this contract, it is not acting as a trustee of any trust or settlement; and
- (h) in making and preparing its Proposal, the purchaser has complied with the vendor's probity requirements and standards in all respects and has not acted in concert with any other proponent or tenderer for the Development.

50.2 Additional purchaser warranties

- (a) The purchaser warrants that it is not a person who falls within any of the following categories:
 - (i) an employee of the NSW Department of Planning and Environment or New South Wales Land and Housing Corporation;
 - (ii) a close relative of an employee of NSW Department of Planning and Environment or New South Wales Land and Housing Corporation;
 - (iii) a person who has a relationship with an employee of NSW Department of Planning and Environment or New South Wales Land and Housing Corporation which would fall within the examples of relationships referred to in Section 47(1) of the *Property and Stock Agents Act 2002* (NSW).
- (b) For the purpose of this clause 50.2, a "close relative" is defined in section 49 of the *Property and Stock Agents Act 2002* (NSW).

50.3 Acknowledgements

The purchaser acknowledges that in entering into this contract the vendor has relied on the warranties given by the purchaser in this clause.

50.4 Indemnity

The purchaser indemnifies and keeps indemnified the vendor against any liability, Loss or Cost arising out of any breach of the warranties in this clause.

51. Requisitions

51.1 Requisitions on title

- (a) The purchaser acknowledges that the requisitions on title contained in Schedule 3 are deemed to be the requisitions on title raised by the purchaser.
- (b) The purchaser further acknowledges that the replies contained in Schedule 4 are deemed to be the vendor's replies to the requisitions on title raised by the purchaser.
- (c) For the purposes of clause 5.1, the requisitions or general questions about the property or the title are taken to have been served on the vendor on the day immediately after the date of this contract.

52. Title particulars and Transfer

52.1 Title particulars

- (a) If the first schedule of the certificate of title refers to “The Housing Commission of New South Wales” the vendor discloses that the vendor is the statutory successor in title to the registered proprietor (without need of conveyance or transfer) under section 10 of schedule 3 of the *Housing Act 2001* (NSW).
- (b) The vendor will not be required to change the name on NSW LRS nor will the purchaser object to such name, and the transfer is to refer to “Minister administering the Housing Act 2001”.

52.2 Delegate to sign transfer

If required, the transfer will be signed by a delegate of the vendor and the purchaser must ensure the standard “Individual” execution clause is used on the transfer for the vendor’s execution.

53. Attachments

53.1 Documents attached on behalf of vendor

The purchaser acknowledges that any person attaching documents to this contract at the request of the vendor or the vendor’s solicitor does so as the agent of the vendor.

53.2 No warranty

Subject to Part 4 of the *Conveyancing Act 1919* (NSW), the vendor does not warrant the accuracy or completeness of the documents attached to this contract.

54. Encumbrances

If a caveat or mortgage is noted on the folio of the Register, the purchaser must accept on completion, a withdrawal of that caveat or discharge of that mortgage in registrable form so far as it relates to the property.

55. Death, insolvency, etc

55.1 Death or mental incapacity

If before completion a party, being an individual, dies or becomes mentally ill, the other party may rescind.

55.2 Financial incapacity of purchaser

The purchaser is in breach of an essential obligation of this contract, the vendor may terminate by serving a notice, and clause 9 applies, if:

- (a) the purchaser, being a corporation:
 - (i) goes into liquidation or provisional liquidation or an application is made for it to be wound up;
 - (ii) has a Receiver, administrator, controller (as defined in section 9 of the Corporations Act) or similar officer appointed to it or any of its assets;

- (iii) makes an assignment for the benefit of or enters into an arrangement or composition with its creditors;
 - (iv) is insolvent or presumed insolvent under the Corporations Act or stops payment of any of its debts; or
 - (v) is deregistered either voluntarily or for non-compliance with its obligations under the Corporations Act; or
- (b) anything occurs in connection with the purchaser under the law of any applicable jurisdiction (other than under the *Bankruptcy Act 1966* (Cth)) having a substantially similar effect to the events specified in clause 55.2(a).

56. Agent's commission

The purchaser represents and warrants that it was not introduced to the property or to the vendor either directly or indirectly by any real estate agent or other person entitled to claim a commission or fee from the vendor other than the vendor's agent named in this contract. The purchaser is liable for and indemnifies the vendor against all liability, Loss, Costs and expenses (including legal fees, costs and disbursements on the higher of a full indemnity basis and a solicitor and own client basis, determined without taxation, assessment or similar process and whether incurred by or awarded against the vendor) arising from or incurred in connection with a breach of this warranty.

57. Not Used

58. Not used

59. Disclosure by Vendor

59.1 Statutory requirements

The vendor may make information and documents in relation to the property available:

- (a) in accordance with and to the extent required by the *Government Sector Finance Act 2018* (NSW);
- (b) so far as possible, on a commercial-in-confidence basis;
- (c) subject to the purchaser's rights at Law, the vendor may publish information concerning the information and documents in relation to the property in accordance with:
 - (i) the NSW Government Procurement Policy Framework (August 2021 – updated 25 August 2021) as amended, supplemented, varied or replaced from time to time; and
 - (ii) the NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013 – updated September 2017) as amended, supplemented, varied or replaced from time to time; and
- (d) under the GIPA Act, the vendor has obligations to:

- (i) publicly disclose government information that is open access information (as that term is defined in the GIPA Act), including by publishing the Transaction Documents on the vendor's contract registers; and
- (ii) release information pursuant to an access application unless the vendor is reasonably satisfied that there is an overriding public interest against disclosure.

59.2 Disclosure

Notwithstanding the other provisions of this clause 59, in relation to any disclosure under clause 59.1(d) the parties acknowledge that:

- (a) (before the proposed date of disclosure) the vendor will use reasonable endeavours to notify the purchaser of any proposed disclosure of commercially sensitive information by the vendor under the GIPA Act in accordance with clause 59.1(d);
- (b) following notification by the vendor under clause 59.2(a), the vendor will use reasonable endeavours to consult with the purchaser before disclosing the commercially sensitive information;
- (c) if, following:
 - (i) notification by the vendor under clause 59.2(a); or
 - (ii) consultation between the parties in accordance with clause 59.2(b),
 the purchaser objects to disclosure of some or all of the commercially sensitive information, the purchaser must provide details of any such objection within 5 business days after the date the purchaser received notification from the vendor or the date on which the consultation process concluded (as relevant); and
- (d) the vendor must take reasonable account of any objection received from the purchaser pursuant to clause 59.2(c) in determining whether the commercially sensitive information identified by the purchaser should be disclosed, and further acknowledging that:
 - (i) the vendor will be under no obligation to accept or otherwise agree to the objections; and
 - (ii) the purchaser may have rights to seek a review of the decision by the vendor to disclose any commercially sensitive information.

59.3 Overriding statutory obligations

The parties, acknowledge and agree that nothing in clause 59 will limit or otherwise affect the discharge of the vendor's obligations to disclose information in connection with the property as required by any Law including but not limited to the GIPA Act.

60. Confidentiality

60.1 Keep confidential

Except as required by law or in the circumstances set out in clause 59 or by the Australian Stock Exchange where a party has a practice of notifying the Australian Stock Exchange or

where the information is in the public domain, the commercial terms of this contract must be kept confidential by the parties and may only be released to:

- (a) the parties' professional advisers on condition that they agree to be bound by the terms of this clause; or
- (b) Mission Australia ACN 000 002 522, Mission Australia Housing ACN 003 683 261, Mission Australia Housing Holdings Limited ACN 677 039 486 and other Related Bodies Corporate of the Developer (where Related Bodies Corporate takes the meaning given to the term 'related body corporate' in the Corporations Act);
- (c) other persons with the prior written consent of the other party which must not be unreasonably withheld or delayed.

60.2 Media

Without limiting clause 60.1, the purchaser must not issue a press or media release or make or cause to be published any public statements in relation to the project (excluding marketing material approved by the vendor) without the prior written approval of the vendor.

61. Dealings

The purchaser:

- (a) must not transfer, assign, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this contract in any way; and
- (b) must ensure that:
 - (i) a person does not become or cease to become the Parent of the purchaser; or
 - (ii) a change in Control of the purchaser does not take place,

without the prior written consent of the vendor (such approval not to be unreasonably withheld).

62. Dispute resolution

62.1 Notice of dispute

If a dispute between the purchaser and vendor arises in connection with this contract or its subject matter, then the disputing party must give to the other a notice identifying and providing details of the subject of the dispute.

62.2 Continuing to perform obligations

All parties to this contract must continue to perform their respective obligations under this contract if there is a dispute but will not be required to complete the matter the subject of the dispute (while the dispute remains on foot), unless the party requiring that matter to be completed indemnifies the other party against reasonable Costs and Losses suffered in completing that matter if the dispute is not resolved in favour of the indemnifying party. This clause does not limit the right of any party to recover damages (including damages for any delay or other Loss and associated Costs) if the matter the subject of the dispute is resolved in favour of that party or the other party withdraws its requirement that the dispute be resolved.

62.3 Parties to consult

Any dispute between the parties arising in connection with this contract or its subject matter must first be referred to the Executive Director, Commercial Division of the vendor and the Deputy CEO of the purchaser to meet within 10 business days after the date of the notice for resolution of the dispute and undertake genuine and good faith negotiations with a view to resolving the dispute. If these persons cannot agree within 10 business days then the remaining provisions of this clause 62 apply.

62.4 Further steps required before proceedings

Any dispute between the parties arising in connection with this contract or its subject matter must, (except in the case of an application for an interlocutory injunction), as a condition precedent to the commencement of litigation, first be the subject of mediation by a mediator agreed by the disputing parties and, if the parties cannot agree within 10 business days, by a mediator appointed by the Resolution Institute.

62.5 Disputes for expert determination

If the mediation referred to in clause 62.4 has not resulted in settlement of the dispute within 25 business days after commencement of the mediation (or such longer period as the parties may agree), then:

- (a) if vendor and the purchaser agree that the matter should be determined by an expert, the matter must be referred to expert determination in accordance with clause 62.7; or
- (b) if vendor and the purchaser do not agree within 10 business days that the matter should be determined by an expert, either of them may commence litigation.

62.6 Choice of expert

A dispute to be referred to an expert in accordance with clause 62.7 must be determined by an independent expert of at least 10 years immediate past experience in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within 5 business days after the matter is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field and, if the parties cannot agree as to the relevant field within 10 business days, by an expert appointed by the Resolution Institute.

62.7 Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest; and
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform each disputing party before being appointed the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of both parties.

62.8 Agreement with expert

The parties must enter into an agreement with the expert appointed under clause 62.7 setting out the terms of the expert's engagement (including the time within which the expert must make the determination) and the expert's fees.

62.9 Directions to expert

In reaching a determination in respect of a dispute under clause 62.7, the expert must give effect to the intent of the parties entering into this contract and the purposes of this contract.

62.10 Role of expert

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present;
- (d) on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other party;
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (g) issue a draft certificate stating the expert's intended determination giving each party 10 business days to make further submissions;
- (h) issue an Expert's Final Certificate stating the expert's determination having had regard to any further submissions received under clause 62.10(g); and
- (i) act with expedition with a view to issuing the Expert's Final Certificate as soon as practicable.

62.11 Complying with directions of expert

The disputing parties must comply with all directions given by the expert in relation to the resolution of the dispute, and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

62.12 Expert may commission reports

Subject to obtaining the prior consent of both parties the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. Provided that both parties have consented to the Costs vendor and the

purchaser must indemnify the expert for the Cost of those advisers or consultants in accordance with clause 62.18.

62.13 Expert may convene meetings

The expert will hold a meeting with all the parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

62.14 Meeting not a hearing

The parties agree that a meeting under clause 62.13 is not a hearing and is not an arbitration.

62.15 Confidentiality of information

The parties agree, and must procure that each of the mediator and expert agrees as a condition of its appointment:

- (a) subject to clause 62.15(b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 62.15(a); or
 - (ii) if required by Law to do so; and
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

62.16 Confidentiality in proceedings

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts shall have been otherwise discoverable in judicial or arbitral proceedings.

62.17 Final determination of expert

The parties agree that the final determination by an expert is final and binding upon them.

62.18 Expert's Costs

If any expert does not award Costs, the disputing parties must each pay an equal share of the expert's Costs incurred from the date of appointment to the date of the final determination.

62.19 Expert generally not liable

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to them in any respect in connection with the carrying out of the expert's functions in accordance with this contract.

62.20 Acknowledgement

The parties acknowledge and agree that any disputes under this contract and any other Transaction Document which relate to the same subject matter will be dealt with together.

62.21 No merger

This clause 62 is an essential provision of this contract and the rights and obligations of the vendor and the purchaser continue beyond completion.

63. Not used

64. Notices

64.1 Form

Unless expressly stated otherwise, all notices, certificates, consents, approvals, waivers and other communications in connection with this contract must be in writing, signed by the sender and marked for attention as set out in clause 64.4.

64.2 Deemed receipt

A document under or relating to this contract is taken to be served:

- (a) if left at the delivery address referred to in clause 64.4;
- (b) if served by prepaid post:
 - (i) within Australia to an Australian postal address, three business days after posting; or
 - (ii) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten business days after posting;
- (c) if served by email, immediately once sent unless a notification of delivery failure is received within 120 minutes of the email being sent; or
- (d) if served on a day which is not a business day or after 5.00 pm on a business day, at 9:00 am on the next business day.

64.3 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by email to the party's current email address for notices.

64.4 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

the Vendor:

Delivery address: 4 Parramatta Square, 12 Darcy Street,
Parramatta NSW 2150

Postal address: As above.

Email:

Attention:

the Purchaser:

Delivery address: Level 7, 580 George Street, Sydney NSW 2000

Postal address: As above

Email:

Attention:

- (b) Each party may change its particulars for delivery of notices by notice to the other party.

65. General

65.1 Duty

The purchaser must pay when it is due, all duty (including any fine, interest or penalty except where it arises from default by the other party) assessed on this contract.

65.2 Legal costs

Except as expressly stated otherwise in this contract, each party must pay its own legal and other Costs and expenses of negotiating, preparing, executing and performing its obligations under this contract.

65.3 Amendment

This contract may only be varied or replaced by a document executed by the parties.

65.4 Indemnities

- (a) Each indemnity by a party in this contract is a continuing obligation, separate and independent from that party's other obligations and survives completion, rescission or termination of this contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in this contract.

65.5 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this contract and to perform its obligations under it.

65.6 Governing law and jurisdiction

- (a) This contract is governed by and is to be construed in accordance with the laws applicable in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

65.7 Liability

An obligation of two or more persons binds them separately and together.

65.8 Entire agreement

To the extent permitted by law, in relation to its subject matter, this contract and the Project Delivery Deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

65.9 Relationship of parties

This contract is not intended to create a partnership, joint venture, agency relationship or any other fiduciary relationship between the parties.

65.10 Severance

If at any time any provision of this contract is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this contract; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this contract.

65.11 No merger

- (a) Any clause to which effect is not given by completion or registration of the transfer to the purchaser and which is capable of taking effect after completion or registration does not merge on completion.
- (b) Each warranty (except those implied by law) and each indemnity in this contract survives completion or termination.

65.12 Electronic Execution

- (a) Each party consents to this contract and any variations of this contract being signed by electronic signature by the methods set out in this clause.

- (b) This clause applies regardless of the type of legal entity of the parties. If this contract or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this contract and any variation of it:
 - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the contract;
 - (ii) insertion of the person's name on to the contract; or
 - (iii) use of a stylus or touch finger on a touch screen to sign the contract;
provided that in each of the above cases, words to the effect of 'Electronic signature of me, [NAME], affixed by me on [DATE]' are also included on the contract;
 - (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the contract; or
 - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this contract and that electronic signing of this contract by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this contract transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this contract for all purposes.

Signing Page

Executed as a deed.

If applicable, where a party signs electronically, that party confirms that by signing below, it has complied with the *Corporations Act 2001* (Cth), and specifically, that the technology neutral requirements pursuant to section 110A of the *Corporations Act 2001* (Cth) have been met.

Signed for and on behalf of **Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales** by
as delegate of
Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales and
I hereby certify that I have no notice of revocation of such delegation in the presence of:

Signature of witness

Delegate (signature)

Name of Witness (please print)

Name of Delegate

Position of Authorised Officer

If applicable, where a party signs electronically, that party confirms that by signing below, it has complied with the *Corporations Act 2001* (Cth), and specifically, that the technology neutral requirements pursuant to section 110A of the *Corporations Act 2001* (Cth) have been met.

Executed by the purchaser specified below in accordance with section 127 of the *Corporations Act 2001* (Cth):

Name of company

ABN/ACN of company

Signature of director

Signature of company secretary/director

Full name of director

Full name of company secretary/director

Schedule 1 - Attachments

(some documents are required by Legislation)

Documents	Attachment
Property certificate for the land	A
DP/Section 88B instrument	B
Dealing	C
Section 10.7 certificate	D
Sewerage service diagram	E
Land Tax Certificate	F

Schedule 2 - Information Documentation

Schedule 3 – Requisitions on title

RESIDENTIAL PROPERTY REQUISITIONS ON TITLE

Vendor: Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales
Purchaser: [to be completed]
Property: [to be completed]
Dated:

Possession and tenancies

1. Vacant possession of the property must be given on completion unless the Contract provides otherwise.
2. Is anyone in adverse possession of the property or any part of it?
3.
 - (a) What are the nature and provisions of any tenancy or occupancy?
 - (b) If they are in writing, all relevant documentation should be produced, found in order and handed over on completion with notices of attornment.
 - (c) Please specify any existing breaches.
 - (d) All rent should be paid up to or beyond the date of completion.
 - (e) Please provide details of any bond together with the Rental Bond Board's reference number.
 - (f) If any bond money is held by the Rental Bond Board, the appropriate transfer documentation duly signed should be handed over on completion.
4. Is the property affected by a protected tenancy? (A tenancy affected by Parts 2, 3, 4 or 5 of the *Landlord and Tenant (Amendment) Act 1948*.)
5. If the tenancy is subject to the *Residential Tenancies Act 2010*:
 - (a) has either the vendor or any predecessor or the tenant applied to the Residential Tenancies Tribunal for an order?
 - (b) have any orders been made by the Residential Tenancies Tribunal? If so, please provide details.

Title

6. Subject to the Contract, on completion the vendor should be registered as proprietor in fee simple of the property free from all encumbrances.
7. On or before completion, any mortgage or caveat must be discharged or withdrawn (as the case may be) or an executed discharge or withdrawal handed over on completion.
8. When and where may the title documents be inspected?
9. Are the inclusions or fixtures subject to any charge or hiring agreement? If so, details must be given and any indebtedness discharged prior to completion or title transferred unencumbered to the vendor prior to completion.

Adjustments

10. All outgoing referred to in clause 14.1 of the Contract must be paid up to and including the date of completion.
11. Is the vendor liable to pay land tax or is the property otherwise charged or liable to be charged with land tax? If so:
 - (a) to what year has a return been made?
 - (b) what is the taxable value of the property for land tax purposes for the current year?

Survey and building

12. Subject to the Contract, survey should be satisfactory and show that the whole of the property is available and that there are no encroachments by or upon the property and that all improvements comply with local government/planning legislation.
13. Is the vendor in possession of a survey report? If so, please produce a copy for inspection prior to completion. The original should be handed over on completion.
14.
 - (a) Have the provisions of the Local Government Act, the *Environmental Planning and Assessment Act 1979* and their regulations been complied with?
 - (b) Is there any matter that could justify the making of an upgrading or demolition order in respect of any building or structure?
 - (c) Has the vendor a Building Certificate which relates to all current buildings or structures? If so, it should be handed over on completion. Please provide a copy in advance.
 - (d) Has the vendor a Final Occupation Certificate issued under the Environmental Planning and Assessment Act 1979 for all current buildings or structures? If so, it should be handed over on completion. Please provide a copy in advance.
 - (e) In respect of any residential building work carried out in the last 7 years:

- (i) please identify the building work carried out;
 - (ii) when was the building work completed?
 - (iii) please state the builder's name and licence number;
 - (iv) please provide details of insurance under the *Home Building Act 1989*.
15. Has the vendor (or any predecessor) entered into any agreement with or granted any indemnity to the Council or any other authority concerning any development on the property?
16. If a swimming pool is included in the property:
- (a) when did construction of the swimming pool commence?
 - (b) is the swimming pool surrounded by a barrier which complies with the requirements of the *Swimming Pools Act 1992*?
 - (c) if the swimming pool has been approved under the *Local Government Act 1993*, please provide details.
 - (d) are there any outstanding notices or orders?
- 17.
- (a) To whom do the boundary fences belong?
 - (b) Are there any party walls?
 - (c) If the answer to (b) is yes, specify what rights exist in relation to each party wall and produce any agreement. The benefit of any such agreement should be assigned to the purchaser on completion.
 - (d) Is the vendor aware of any dispute regarding boundary or dividing fences or party walls?
 - (e) Has the vendor received any notice, claim or proceedings under the *Dividing Fences Act 1991* or the *Encroachment of Buildings Act 1922*?

Affectations

18. Is the vendor aware of any rights, licences, easements, covenants or restrictions as to use other than those disclosed in the Contract?
19. Is the vendor aware of:
- (a) any road, drain, sewer or storm water channel which intersects or runs through the land?
 - (b) any dedication to or use by the public of any right of way or other easement over any part of the land?
 - (c) any latent defects in the property?
20. Has the vendor any notice or knowledge that the property is affected by the following:
- (a) any resumption or acquisition or proposed resumption or acquisition?
 - (b) any notice requiring work to be done or money to be spent on the property or any footpath or road adjoining? If so, such notice must be complied with prior to completion.
 - (c) any work done or intended to be done on the property or the adjacent street which may create a charge on the property or the cost of which might be or become recoverable from the purchaser?
 - (d) any sum due to any local or public authority? If so, it must be paid prior to completion.
 - (e) any realignment or proposed realignment of any road adjoining the property?
 - (f) any contamination?
- 21.
- (a) Does the property have the benefit of water, sewerage, drainage, electricity, gas and telephone services?
 - (b) If so, do any of the connections for such services pass through any adjoining land?
 - (c) Do any service connections for any other property pass through the property?
22. Has any claim been made by any person to close, obstruct or limit access to or from the property or to an easement over any part of the property?

Capacity

23. If the Contract discloses that the vendor is a trustee, evidence should be produced to establish the trustee's power of sale.

Requisitions and transfer

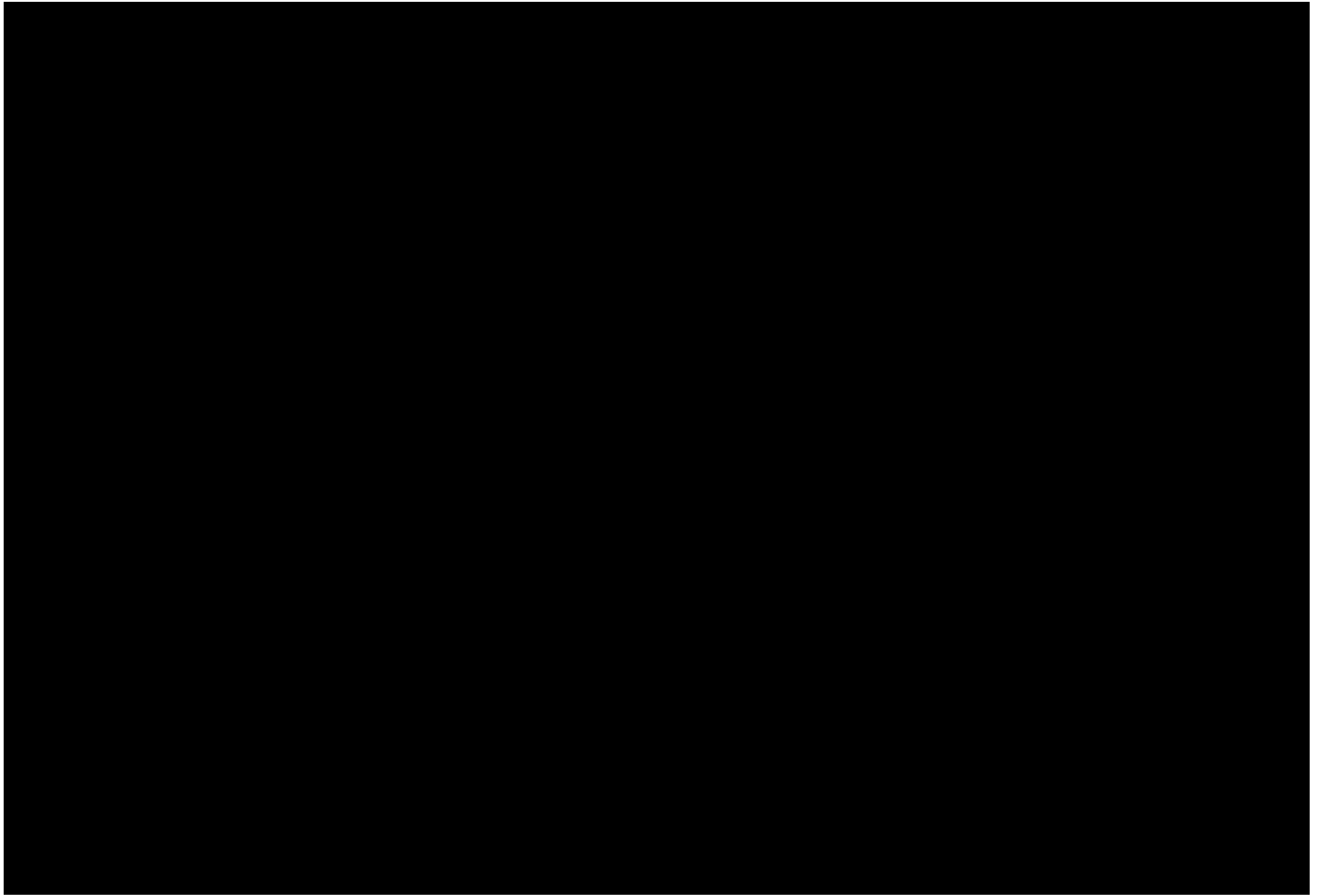
24. If the transfer or any other document to be handed over on completion is executed pursuant to a power of attorney, then at least 7 days prior to completion a copy of the registered power of attorney should be produced and found in order.
25. If the vendor has or is entitled to have possession of the title deeds the Certificate Authentication Code must be provided 7 days prior to settlement.
26. Searches, surveys, enquiries and inspection of title deeds must prove satisfactory.
27. The purchaser reserves the right to make further requisitions prior to completion.
28. Unless we are advised by you to the contrary prior to completion, it will be assumed that your replies to these requisitions remain unchanged as at completion date.

Schedule 4 - Vendor's replies to the requisitions on title

SALE OF: [to be completed] [Drafting note – to be reviewed by Homes NSW and amended on a project by project basis]

1. Noted, subject to contract.
2. Not to the Vendor's knowledge.
3. (a)-(f) Not applicable.
4. No.
5. (a)-(b) Not applicable.
6. Noted, subject to contract.
7. Noted.
8. At Vendor's head office, by appointment.
9. No.
10. These will be adjusted on settlement in accordance with the contract.
11. No.
12. Noted.
13. If the Vendor holds a survey report, a copy is provided in the contract, and if available the original will be handed over on settlement.
14. (a) So far as the Vendor is aware.
(b) Not as far as the Vendor is aware.
(c) If the Vendor holds a building certificate, a copy is provided in the contract. However we may not hold the original and since it is not a document of title we will not hand it over on settlement.
(d) The Purchaser must rely on his own enquiries.
(e)(i)-(iii) The Vendor is unaware of any residential building work in the last 7 years.
(e)(iv) The Vendor is exempt pursuant to s103E of the said Act.
15. No.
16. Not applicable.
17. (a) Presumably to the Vendor and adjoining owners.
(b) Only to the extent apparent from inspection or disclosed in the contract upon which the Vendor relies.
(c) The Vendor relies upon the contract.
(d)(e) No.
18. Only to the extent apparent from inspection or disclosed in the contract upon which the Vendor relies.
19. The Vendor relies upon the contract.
20. Only to the extent apparent from inspection or disclosed in the contract upon which the Vendor relies.
21. The Vendor relies upon the contract.
22. Not to the Vendor's knowledge.
23. Not applicable.
24. Not applicable.
25. Noted, subject to the deed having such a Code.
26. Noted, subject to contract.
27. This alleged right is not admitted.
28. Noted

Attachment 4 – Concept Design Documents



Attachment 5 – Social Housing Product Requirements and Finishes

HAFF Program Round 2 – Coffs Harbour

Homes NSW Product Requirements

3 October 2025 Revision 2

Introduction

These Mixed Tenure Product Requirements inform the design of the mixed-tenure projects funded through the HAFF Program by providing the numeric standards and project specific information referred to by the 2023 LAHC Design Requirements.

The Brief does not override statutory obligations set out in other documents including the National Construction Code or Australian Standards.

The Mixed Tenure Product Requirements will be periodically updated to represent agreed benchmarks and arrangements.

1	Planning controls
1.01	Although in some circumstances provisions of the Housing SEPP effectively “turn off” local DCP controls, consideration should be given to incorporating these elements into the design where possible to ensure integration into the local context and to mitigate against local council objections.
1.02	The 2023 LAHC Design Requirements referenced in the Housing SEPP provides the minimum standards for the design of the apartments.
1.03	It is expected that the social housing dwellings will be tenure blind (indistinguishable externally from other dwellings and neighbouring buildings).
2	Environmental performance
2.01	Minimum targets required by legislation such as the NCC and the Sustainable Building SEPP are supplemented by those set out in the 2023 LAHC Design Requirements.
2.02	Provision of solar panels is to be maximised to provide for - Common area power & hot water - Individual apartment air conditioning units & power needs in that order, and in line with Homes NSW Practice Note ‘Housing Portfolio – Implementing Air Conditioning (AC) & Photovoltaic (PV) In New Homes NSW Dwellings’ (May 2024).
2.03	To achieve net zero-ready homes, buildings are to be all-electric with induction cooktops and electric hot water. Metering arrangements will be resolved in collaboration with the CHP partner.
3	Universal design
3.01	All social housing units to be delivered to comply with the ABCB Livable Housing Design Beyond Minimum Voluntary Standard 1.1 (adapted from the ‘Gold’ level provisions of the Livable Housing Design Guidelines (LHDG), fourth edition, 2017)
3.02	20% of social housing units are to be delivered as per 3.01 <u>and</u> be capable of easy modification to comply with Schedule 4 of the Housing SEPP (to suit wheelchair users).
3.04	Refer Appendix A Yield Schedules for amount and type of accessible parking.

Homes NSW brings together the housing and homelessness functions of the Department of Communities and Justice (DCJ), the NSW Land and Housing Corporation (LAHC), Aboriginal Housing Office (AHO) and key worker housing functions from across government under one roof. A division within DCJ, Homes NSW leads work to provide safe and secure homes through social and affordable housing while delivering supports and services that minimise experiences of homelessness being repeated.

Dwelling Configuration

4	Title and tenure
4.01	This project will be delivered in partnership with a registered Tier 1 Community Housing Provider (CHP), as required by Housing Australia. The partner CHP is selected via a direct dealing process ending with establishment of a Project Delivery Agreement (PDA).
4.02	It is intended, subject to final resolution in the PDA, that: - All units are designed to enable strata title subdivision - Homes NSW will own some of the social housing units in perpetuity - The partner CHP will own the remainder of the social housing units in perpetuity, and these will be transferred in freehold to the CHP - The Homes NSW-owned social homes will be managed by the partner CHP on a 49-year lease - All social homes will be tenanted from the Homes NSW waiting list - Ongoing maintenance for the development will be the responsibility of the partner CHP for the duration of the 49 year lease.
4.03	Stratification of the two ownerships of the developments is as straightforward as possible, in both strata and stratum.
4.04	All tenants are to be provided with permanent and equal access to all public areas and facilities via the registration of easements or through a BMS (registered Building Management Statement).
5	Dwelling types and mix
5.01	Refer to Attachment A Yield Schedule for the following requirements: - The mix and number of apartments - Carparking allocation
5.02	The yield described in the schedules underpins the funding bid submitted by Homes NSW to Housing Australia. Any deviation from the yield schedule will need to be assessed for impacts on funding and feasibility and can only proceed with the agreement of Homes NSW.
5.03	Bedroom/bathroom configuration is as per the 2023 LAHC Design Requirements.
6	Parking and basements
6.01	Parking rates are provided for each project as part of the yield schedule in Attachment A .
6.02	Parking rates are as set out by the Housing SEPP, i.e. 0.4 spaces per 1B, 0.5 spaces per 2B and 1 space for each 3B dwelling.
6.03	The Housing SEPP does not require provision of visitor parking, however a token amount of visitor parking has been incorporated into the brief to facilitate services provision to tenants.
6.04	The Housing SEPP does not stipulate a minimum number of accessible car spaces. Homes NSW has determined that it is appropriate that the social homes which comply with Schedule 4 in the Housing SEPP should be provided with accessible parking at the Housing SEPP rates (i.e. 20% of carparking spaces will be provided as accessible). Accessible spaces can either have a min. 5.4 x 2.4 shared zone beside them <u>or</u> be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction. In both cases the head clearance required is 2.5m (with setdowns over the bonnet as per AS2890.6).
6.05	Target provision of car spaces at 5.6m x 2.4m in accordance with the draft Australian Standard 2890.1, which is highly likely to be in effect before construction commences.
6.06	Avoid small car spaces (less than 5.4 x 2.4m) and parking spaces under ramps. Tandem car spaces not permitted. Carwash bay not required but can be provided at the CHP's discretion.
6.07	Provision for EV parking to be in accordance with NCC. The selected CHP may elect for a higher specification, e.g. fast-charge point in visitor space, at their discretion.
6.08	Bicycle parking is to be provided in accordance with the yield schedule and can be stored in storage cages where suitably sized, noting many social housing tenants prefer to store their bicycles in their apartments or in their private open space.
6.09	Where bikes are not stored in individual cages but are racked, provide a mix of horizontal and vertical bicycle racks. Provide for storage/charging for electric bicycles in separate room.

6	Parking and basements (continued)
6.10	Storage cages: provide as required by the Apartment Design Guide (ADG) to accommodate external storage, if there is insufficient storage space within the apartment. Provide with minimum internal clearance of 1m wide x 1m deep, and height to suit minimum of 500 mm clearance (or as advised by the hydraulic engineer) to the underside of fire sprinklers. Access to storage cages in basements cannot be via car parking spaces, as parking is not permanently allocated to a single unit, whereas storage is usually required for units in particular.
6.11	Storage cages are to be offset from external basement wall so that they are sufficiently clear of wet walls and basement drainage.
6.12	Carpark security and access: • If a car share space is provided, it must be publicly accessible • Provide secure access between the 'public' access and the visitor parking. • A secure line between visitor spaces and resident spaces should be provisioned in the setout of the car spaces where possible. • Residents with access to parking will be provided with fob keys. • Intercom will be required for visitor access – allow for central reservation at entry ramp i.e., clear width of min. 7.2 metres including kerbs.
6.13	Car spaces will not be allocated to apartments, and allocation of the car spaces will be at the partner CHP's discretion.
7	Communal facilities
7.01	A common room (<u>communal indoor space</u>) is to be provided for residents, with power, water and waste points for a kitchenette, and with: • An accessible unisex bathroom including shower with swipe key access, ideally accessible without going through the common room. • An acoustically separate meeting room for client service visits. Ideally the common room will be approx. 75 sqm and with a minimum dimension of 6m to allow large group meetings. It would ideally not be fully enclosed, which can lead to the space being closed off from tenants or taken over by a particular group of tenants to the exclusion of all others.
7.02	Where possible, the common room should adjoin communal outdoor space. Alternatively, locate adjacent the entry so it can be associated with building management services.
7.03	The common room should be accessible to all building tenants.
7.04	The partner CHP will manage all communal facilities.
7.05	<u>Communal open space</u> should be provided at rates required by the ADG. • Locate at ground level where possible. • Communal open space areas are to be accessible to all tenants irrespective of tenure. • Refer LAHC Design Requirements and the Homes NSW Resilient Landscape Guide for further design guidance.
7.06	<u>Mailboxes</u> : Locate mailboxes within entry lobby, and provide lock box with access key for Australia Post. Provide lockers in entry lobby for home deliveries, equivalent to 15-door parcel locker supplied by https://myparcellocker.com/products/parcel-lockers/
8	Building design guidance
8.01	The following guidance is specific to mixed tenure projects in the HAFF program, in addition to minimum standards set out in the 2023 LAHC Design Requirements.
8.02	<u>Building entries</u> : any building entry is to be given substantial design attention to provide an identifiable, direct, safe, welcoming, and attractive address. Consider preventing tailgating by introducing secure entry courtyards with high levels of surveillance from the public domain.
8.03	<u>Breezeways</u> : where utilised for access to apartments, do not use breezeways as the sole outlook or source of daylight and ventilation for either living rooms or bedrooms.
8.04	<u>Balconies</u> : avoid locating balconies over habitable internal space
8.05	<u>Maintenance access</u> : do not rely on access through individual units for building or landscape maintenance or maintenance of common areas. Access is to be provided through common corridors and hallways including to any roof space.

8	Building design guidance (continued)
8.06	<u>Clothes drying</u> : private open space must include screened clothes drying areas, providing 1B apartments with 14 m clothesline and 2B+ apartments with 20 m clothesline.
8.07	<u>Barrier design</u> : consider safety barriers during the concept design for all trafficable and non-trafficable roofs, consistent with the architectural expression of the building. Ensure doors opening onto outdoor areas like roof terraces have adequate weather protection to protect the door and prevent water ingress.
8.08	<u>CPTED</u> : crime prevention through environmental design (CPTED) principles should be central to design e.g., mailboxes accessible from within access-controlled portion of site.
8.09	<u>Structural approach</u> : minimise transfers and rationalise structural grid at concept phase. Consider capping beams and coordinate with natural ground level and finished levels. Align service risers vertically through building.
8.10	<u>Stormwater reticulation</u> : ensure roof and balcony drainage is integrated with the building design.
8.11	<u>AC external condenser units</u> : to be located on roof, in basement or on level-by-level condenser decks, not on balconies where heat rejection creates poor amenity.
8.12	<u>Common corridors</u> : generally achieve minimum width of 1,600mm (clear of skirtings), except outside lifts, where a minimum width of 2,100mm is required.

Key reference links

Document	Link
Good Design for Social Housing (2020)	https://www.nsw.gov.au/sites/default/files/noindex/2025-05/good-design-for-social-housing.pdf
LAHC Design Requirements (2023)	https://www.nsw.gov.au/sites/default/files/noindex/2025-05/lahc-design-requirements.pdf
Apartment Design Guide & ADG case studies	https://www.planning.nsw.gov.au/policy-and-legislation/housing/apartment-design-guide
Livable Housing Design Voluntary Standard 2022 published by ABCB	https://www.abcb.gov.au/sites/default/files/resources/2023/Livable-housing-design-Beyond-Minimum-Voluntary-Standard-1.1.pdf

Attachments

Ref	Attachment
Attachment A	Yield Schedule
Attachment B	2023 LAHC Design Requirements
Attachment C	Homes NSW Practice Note: Implementing air conditioning (AC) & photovoltaic (PV) in new dwellings
Attachment D	Homes NSW Resilient Landscape Guide

Attachment A – Yield Schedule

The yield schedule includes:

- Total number of apartments and type (number of bedrooms)
- Mix of social and affordable apartments
- Amount of car and bike parking for residents and visitors

Total GFA, yield or tenure split must not be varied without approval from Homes NSW.

YIELD SCHEDULE – COFFS HARBOUR

211A-215 Harbour Drive Coffs Harbour

Apartment yields		HNSW social	CHP social	total
1 bedroom	43%	15	11	26
2 bedroom	53%	17	15	32
3 bedroom	3%	2	-	2
Apartment subtotals		34	26	60
Tenure split		57%	43%	100%

Accessibility - LHDG only		HNSW social	CHP social	total
Livable Housing Design Voluntary Standard 2022 (Gold)	100%	34	26	60
Voluntary standard + Schedule 4 Housing SEPP to suit wheelchair users*		7	6	13

Car parking		HNSW social	CHP social	total
Residential - Housing SEPP rates (0.4 for 1B, 0.5 for 2B, 1 for 3B) including 4 accessible spaces		16.5	11.9	29
Allowance for visitors (1 accessible space)		-	-	2
Car parking subtotal (minimum)				31

Motorcycle and bicycle parking		HNSW social	CHP social	total
Motorcycle parking - DCP rates not provided		-	-	Max 2
Residential bicycles – target Homes NSW rates (including residential e-Bikes)	1/unit	34	26	Max 60
Visitor bicycles - DCP rates are not provided. Provide 4 spaces in publicly accessible front setback		2	2	-
		-	-	4

* Voluntary standard + Schedule 4 Housing SEPP to suit wheelchair users – units are designed to be able to be easily modified to achieve compliance with Schedule 4 of the Housing SEPP, i.e. replace glass shower screen with curtain rail, add grab rails, update kitchen with accessible oven, etc.

Attachment B – 2023 LAHC Design Requirements

Design requirements

The *Land and Housing Corporation (LAHC) Design Requirements* inform the design and development of the LAHC social housing property portfolio. These requirements apply to all new LAHC developments and are driven by tenant wellbeing, design quality, environmental performance and operational effectiveness within cost parameters.

This document is a benchmark tool to establish minimum requirements, standardise decision-making and enable project-specific innovation. It is for the use of LAHC staff, external consultants, project managers and development partners.

Legislation and code reference

Legislation and policies that impact the design of LAHC projects:

Environmental Planning and Assessment Act 1979, Housing Act 2001 (NSW), Residential Tenancies Act 2010

State Environmental Planning Policy (Housing) 2021 (Housing SEPP) and other environmental planning instruments (SEPPs and LEPs)

National Construction Code (NCC) and referenced Australian Standards
BASIX, NatHERS

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development and Apartment Design Guide 2015 (ADG)

Local development control plans and council guidelines (DCPs etc)

Seniors housing design guidelines given effect by the Housing SEPP

Livable Housing Design Guidelines

Good Design for Social Housing and LAHC Design Requirements (this document) are required to be considered by NSW Land and Housing Corporation before carrying out certain developments without consent, as required under ss30, 43 and 108C of the Housing SEPP.

These documents further inform the design of any LAHC development:

LAHC development brief (project specific)

LAHC policies including the LAHC Heating and Cooling Policy and the LAHC Lift Policy

LAHC specification with associated schedules

Key design principles

These principles from *Good Design for Social Housing* apply to all design decisions and material selections for LAHC developments:

Good for tenants



Our housing considers the needs of our tenants, has low running costs and is flexible to adapt to future requirements.

Whole of life cycle approach

New homes are considered for their whole-of-life costs, including operation and maintenance efficiency. Reducing the cost and burden of maintaining property benefits everyone.

Mixed tenure



LAHC aims to create an enduring, high-quality property portfolio that is a source of pride for our tenants. Our housing is indistinguishable from private housing and is well-integrated within diverse communities.

Continuous improvement



The next project is better than the last through learning from others, our experience and incorporating new practices.

Sustainability and resilience

Our housing is environmentally, culturally, socially and economically sustainable, and resilient to anticipate future challenges.

Quality homes



Create a sense of dignity by providing housing that tenants are proud to call their home.

Environmental performance principles

LAHC developments integrate contemporary passive design to ensure tenant comfort, reduce ongoing operational costs, improve environmental performance, and move towards delivery of net zero ready homes.

This section applies to all new dwellings and significant modifications to Class 1A dwellings in the LAHC portfolio.

These targets will deliver lower home utility bills, reduce carbon emissions, and ensure homes are healthy, thermally comfortable, well-lit, well-ventilated and maximise amenity for residents.

Passive design	Implement passive design techniques: maximise northern orientation to living spaces, calibrate eaves and solar shading on eastern, western and northern facades, relate glazing design to orientation, use deciduous trees for shading, and position windows to improve airflow and capture prevailing breezes.
Net zero	Optimise roof design to accommodate solar panels. Preference electricity as the power source for all energy requirements associated with normal operations for both new projects and modifications. Aim for 'net zero ready' homes: high-performance homes with a level of energy efficiency that enables the annual energy consumption to be offset by a renewable energy system.
NatHERS targets	Target minimum 7 Star NatHERS rating as an average within each new development, with a target for each dwelling of minimum 6 Star NatHERS rating for Class 2 and minimum 7 Star NatHERS rating for Class 1 and Class 1A. Higher NatHERS ratings are encouraged.
BASIX	All new dwellings and significant modifications must comply with BASIX. Note tenant supplied appliances (fridge, dishwasher, microwave, washing machine and dryer) cannot be included in BASIX calculations.
Healthy home targets	Use products that are low-VOC and low-allergenic with high recycled content. Ensure adequate air flow to limit mould, maximising the number of dwellings that are naturally cross-ventilated, i.e. dwellings where openings are in facades facing alternate aspects to maximise wind exposure. Include natural ventilation to wet areas where possible. Plan for retrofit of air conditioning (AC), where not installed from the outset.
Daylighting targets	Varied, quality daylighting is essential in all dwellings to provide amenity. Apply ADG minimum solar access standards (i.e. 70% of dwellings receive a minimum of 2 hours solar access to living spaces and private open space), and exceed this standard where possible. Avoid any dwellings receiving less than 15 mins of solar access to living areas and private open space. Ensure adequate daylighting to common areas to eliminate artificial lighting during the day.

Universal design principles

To support a diverse tenant cohort, LAHC aims for best practice in access and liveability.

Universal design principles equally apply to site planning, common areas and individual dwellings.

Design teams are to consider universal access at the outset of the project in, for example, preferencing walkways to ramps to reduce the extent of tactile and handrails, and integrating access circulation into the architecture and landscape design.

The LAHC development brief defines the mix of dwellings and the percentage of dwellings that are to be delivered as adaptable, accessible, or to meet *Livable Housing Design Guidelines* performance levels (silver, gold or platinum).

Unless otherwise noted in the brief, apply the following as a minimum:

Baseline provision: general housing	Apply <i>Livable Housing Design Guidelines</i> (LHDG) silver level to all new LAHC dwellings where level access is available, including at ground level and on floors serviced by a lift. For upper level dwellings without lift access, include silver-level features in each dwelling, to allow for future adaptation where a lift is retrofitted.
Baseline provision: seniors housing	Housing SEPP Schedule 4 requirements apply to all new LAHC dwellings in seniors housing developments where level access is available, including at ground level and on floors serviced by a lift. For the upper level of 2-storey seniors housing developments without lift access, match arrangements on the ground floor, including latchside clearance, and ensure common circulation is designed in such a way that a lift can be retrofitted to access the upper level.
Adaptable dwellings	Provide the percentage of adaptable dwellings required by local planning controls, at the standard defined by AS4299 Class C.

External character

LAHC dwellings sit well with their neighbourhood context and provide high levels of amenity for residents. Siting balances a sense of community and arrival with individual privacy and equitable access for all tenants. Use siting and layout to minimise overlooking between dwellings and to neighbours.

Site planning

Context	Consider neighbouring buildings in the distribution of site density and open space, particularly for infill developments or where there is a change of use. Sensitive built form transitions contribute to place-making and amenity for residents and neighbours.
Site access and circulation	Use site planning, building design and landscaping to provide clear wayfinding, and legible and safe circulation. Building entries to be clearly defined and accessible. Consider direct street access for ground floor dwellings. Develop a comprehensive wayfinding strategy that includes spatial cues, lighting and signage. Avoid conflicts between pedestrian pathways and vehicle access and ensure good sightlines are available for safety. Minimise the length of on-site driveways.
Topography and grades	Minimise retaining walls or steps, and target site benching with maximum 1:10 slopes to turf and garden beds. Where retaining walls are necessary, provide them at a suitable height to allow use as incidental seating. Avoid the requirement for fall protection on retaining walls.
Parking	Provide parking in accordance with the development brief and applicable codes. Integrate landscape design with any surface car parking. Where possible provide landscaped break(s) and shade trees between parking spaces or rows, and between surface parking and adjacent built structures and site boundaries.
Public and private space	Express the hierarchy of spaces in the design, ensuring clear separation of public, semi-public (communal) and private space. Incorporate crime prevention through environmental design (CPTED) principles and allow for passive surveillance of common circulation and gardens.
OSD and storm-water	Comply with local planning controls in the management, storage, treatment and disposal of stormwater on site. Where on-site detention (OSD) tanks are required, consider location to avoid impact on deep soil, e.g. under surface car parking and driveway, or in a basement within the building footprint.

Green infrastructure

Deep soil	Prioritise provision of appropriately sized and located deep soil, connected where possible to deep soil in the public domain or on neighbouring sites.
Tree canopy	Retain existing healthy and well-structured established trees where possible and where beneficial to the project. Locate new trees at least 3 metres from built structures and major services, including on neighbouring properties, to avoid structural damage and reduce maintenance burden.
Plant selection and landscape design	Provide landscaping that is low maintenance and drought tolerant. Select species that are appropriately scaled for the application. Preference endemic native species to contribute to fauna habitat and biodiversity, but use exotic planting if required to achieve neighbourhood character, or where specific qualities are required, such as deciduous shade trees. Plant out boundary setbacks to achieve amenity for neighbours and residents, for outlook and visual privacy. Provide planting in private open space equal in quality to common area planting. Where possible, screen private open space on street frontages with common area planting.

Communal open space (COS)	Where communal open space (COS) is provided: — Maximise winter solar access. — Provide passive surveillance of COS from dwellings, common circulation or the public domain. — Integrated furniture is preferred, to reduce vandalism. — Locate COS to minimise impact of potential noise generation on residents and neighbours. — Community gardens may be considered for large-scale developments.
Private open space	All dwellings are to have a useable, weather-protected balcony or private outdoor area, associated with and accessed from the primary living area. Provide maintenance access where possible from common circulation to landscaped private open space, to avoid taking maintenance equipment through dwellings. Avoid small areas of turf in private open space and where regular lawn maintenance is not practical due to access or limited area for equipment storage.

Exterior fixtures and finishes

Fences and boundary treatments	Ensure fences are provided to rear and side boundaries and private open space between 1.5 and 1.8 m high for privacy. Front fence height and design to be appropriate to the context; refer local council guidance. Use planting in addition to fencing to soften and screen.
Roofs and rainwater goods	Permitted roof falls range from 3–25 degrees and depend on dwelling type, local character and roofing technical specification. Minimise use of box gutters and plan overflows for all gutters. Prefinished light-coloured metal roof sheeting and rainwater goods are preferred; use tile roofing where appropriate for the context or if required by the consent authority. For flat roofs, provide roof planning and waterproofing details for LAHC review.
Walls	Use hard-wearing and self-finishing materials such as face brick, integral finished metals or precast concrete. Minimise painted or rendered finishes that will require scaffolding to maintain. Bird nesting, efflorescence, graffiti and other sources of staining to be designed out as much as possible.
Doors and windows	Glazed doors and windows to be powder-coated or anodised aluminium, and be secure, weathertight, and easy for the tenant to clean. Provide fly screens to all openings, and security screens to any openings which can be accessed from ground level or from balconies or climbable elements. For carports and garages in single dwellings and townhouses, use garage doors if contextually appropriate. Use dead latches with key operation and release feature for external doors (including garage). Key all windows alike and ensure windows can be locked in minimum open position for secure natural ventilation.
Balconies and screens	Fall balconies away from interiors, and include overflows. Floor wastes can be cast into balcony slabs, but avoid downpipes cast into structure. Integrate rainwater goods into design; avoid visible branch pipes. Design balconies, balustrades, privacy screening and solar shading to contribute to built form articulation. Screen visible utilities and clothes drying.
Building entries and mailboxes	Common pathway to main entry minimum 1.2 m wide; wider for apartment buildings. Provide rain protection to building entries. Provide mail boxes for each dwelling in accordance with Australia Post's Point of Delivery Policy.

Interior configuration and detailing

LAHC interiors are contemporary, healthy and comfortable at the same time as being robust and easy to maintain. Select materials that are easy to clean and enable safe access. Dwelling layouts should maximise privacy for residents, connect to private outdoor space, and benefit from excellent outlook, access to sunlight and fresh air.

Dwelling configuration

Dwelling types and mix	The LAHC development brief will define the target dwelling mix, and the number of livable, adaptable or accessible dwellings. The areas and dimensions provided below are a minimum. Where dual key apartments are briefed, each apartment should comply individually without including the shared entry. Projects should balance spatial efficiency with best practice for tenant comfort and flexible furniture layout.	
Title and tenure	For future title arrangements and subdivision, refer to the LAHC development brief. Design all projects to enable full strata subdivision, regardless of whether this will be formalised in the short term. The brief will also nominate if the project will be managed by LAHC or by a community housing provider (CHP).	
Minimum areas and configuration Min area excludes stair and stair void in 2-storey dwellings. Livable, adaptable or accessible dwellings may need to be larger than these minimums to achieve required clearances and circulation.	Studio – 35 m² Balcony 8 m ² Open plan living/dining/kitchen/bedroom Single bathroom including laundry	1 Bed – 50 m² Balcony 8 m ² Open plan living/dining/kitchen Single bathroom including laundry
	2 Bed – 70 m² Balcony 10 m ² Open plan living/dining/kitchen Single bathroom including laundry 2-storey townhouse: As above + WC with handbasin on alternate level to bathroom	3 Bed – 90 m² Balcony 12 m ² 4 Bed – 110 m² Balcony 14 m ² Open plan dining/kitchen Separate living Full bathroom WC with handbasin Laundry room
Definitions: Single bathroom including laundry: vanity basin, WC, shower; integrated laundry preferred but can be separate if necessary. Full bathroom: vanity basin, WC, shower and separate bath. WC with handbasin and laundry room can be combined, if handbasin still provided separately to laundry tub.		
Balconies and private open space These dimensions represent a minimum requirement. SEPP controls (e.g. ADG, Housing SEPP) take precedence where those requirements are greater than these.	Balconies to have a minimum weather-protected depth of 2 m, to accommodate an outdoor dining suite. For dwellings at ground level or on a podium/terrace where a private open space is provided instead of a balcony, the minimum area is 15 m ² with a minimum depth of 3 m. Include a weather-protected paved area equivalent to the balcony sizes nominated above. Consider providing an additional 2 m ² of balcony space to allow for clotheslines and on-balcony bicycle storage, particularly if justifying non-compliance with bicycle parking targets. Minimise likelihood of AC condensers being located on balconies, including where provisioning for future retrofit. Where there is no alternative location possible, ensure balcony arrangement considers climbability and impact of heat rejection on balcony amenity. Provide each dwelling with an accessible clothesline on the balcony or within courtyard. Refer LAHC specification for size.	
Minimum dimensions	Minimum room widths to support flexible furniture layout: 3.6 m (living) and 3 m (bedroom excl robe). Minimum area of primary bedroom 10 m ² . SEPP controls (e.g. ADG) take precedence where minimums are greater. All layouts to be tested with furniture.	
Ceiling heights	Generally minimum 2.7 m ceilings for all types. 2.4 m ceilings are only permitted in upper level habitable rooms (excluding living rooms) for 2-storey dwellings approved under <i>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i> (Codes SEPP).	
Note	This dwelling configuration section does not apply to boarding houses or group homes.	

Common areas and entries

Common circulation	All foyers and corridors to have hard floor finishes and be naturally ventilated. Where possible, provide stormproof openings at either end of enclosed corridors to allow natural cross-ventilation. Maximise natural daylighting in common areas and install LED lighting with movement sensors to reduce operating costs. Ensure common corridors are sized for easy movement of furniture. Ensure any external or breezeway stairs and corridors are covered for weather protection.
Communal indoor space	Where common rooms are required by codes or the LAHC development brief: — encourage positive social interaction through the design of the space — maximise amenity and outlook by locating common rooms near any communal open space — provide natural cross-ventilation and daylighting.
Common entries	Refer to the LAHC development brief for secure entry and intercom requirements for apartment buildings. Where the development does not have an intercom system, each dwelling entry is to be fitted with a hard-wired door bell and door viewer.

Interior fitout and finishes

Finishes generally	Unless noted otherwise in the development brief, all living areas are to have tiled floors or resilient flooring, and all bedrooms carpet. Ensure threshold transitions comply with LHDG or AS1428.1 where dwellings are required to be adaptable or accessible, including to access the private open space.
Kitchens	Benchtops to be laminate or composite stone, with 20 mm overhang to cupboard fronts. Island benches with sinks must be 800 mm deep or include a splashback. Refer to the LAHC development brief for detail on minimum bench lengths and other provisions. Allow fridge space minimum 800 mm wide (studio / 1 bed) and 900 mm wide (2 bed+), 600 mm wide pantry (studio/1B underbench, 2B+ full height), minimum 450 mm wide drawer unit, and include removable 600 mm wide dummy cupboard adjacent to sink cupboard, with tiled floor under, and GPO/stopcocks in sink cupboard, suitable for tenant-supplied dishwasher.
Bathrooms	Unless noted otherwise in the development brief, floors and walls to be fully tiled, including behind any storage units. Provide vanity units with leg supports (no cantilevers) and bathroom storage in vanity or behind mirror. Showers to be hobless. Review waterproofing extent and details with LAHC.
Laundries	Floors tiled, as well as walls around tub and machine. Where laundry is separate to bathroom, provide dedicated floor waste in front of space for washing machine, and exhaust fan linked to GPO that will be used for tenant-supplied dryer. Provide minimum 35 L tub with integrated cabinet and bypass in all dwellings. Any doors to laundry cupboards are to be hinged not bifold.
Storage	Provide linen cupboard (600 x 450 mm with shelves) and broom cupboard (600 x 450 mm) in all dwellings. All bedrooms to have built-in wardrobes with 0.6 m minimum depth and 2.4 m minimum height, 1.8 m wide to primary bedroom and 1.5 m wide to all other bedrooms, fitted with shelf and rail at minimum.
Window furnishings	Provide internal window furnishings for privacy and glare control to all windows and doors, except for bathrooms, where translucent glass is preferred.

Services and maintenance

LAHC dwellings are low maintenance and future proof, reduce utility costs for tenants and support clean, sustainable and operational dwellings. Utilities, components and operational systems support net zero ready homes and align with LAHC sustainability policies.

Generally

Services integration	All services and utilities, including substations (kiosk or chamber), power poles, distribution boxes, sewer vents, hydrants, plumbing and drainage and communications infrastructure, are to be integrated into the overall design and located to be as unobtrusive as possible. Accessible externally mounted fittings and fixtures should be tamper proof.
Metering	Electricity, gas and potable water are to be individually metered to each dwelling as the tenant is responsible for utility costs, unless otherwise noted in the LAHC development brief .
Safety in design	There are a number of hold points in the design and construction program for key reviews, including statutory 'safety in design' reviews. Refer to the LAHC development brief for details.
Maintenance	Provide a detailed maintenance and access plan for discussion with LAHC during design development. Service access to lifts and other equipment, as well as facade, roofs, landscaping etc, to be carefully considered to avoid unauthorised access, fall from heights and other hazards. Include this as part of mandatory safety in design reviews at key milestones.

Hydraulic services

Water service	Provide garden tap(s) in both private and common garden areas, including upper balconies. Avoid situations where a hose would need to cross common pathways, driveways or on-grade car parking. Irrigation systems are not to be installed.
Rainwater tanks	Rainwater tanks and rainwater re-use to be incorporated only when required by BASIX.
Pits and pipes	All grates in trafficable areas to be fitted with anti-slip heelguard. Infill on blind pit covers to match surrounding material.
Hot water service	Install heat pumps for hot water wherever possible, otherwise provide individual instantaneous gas HWU located within each dwelling's private open space, with concealed pipework and recessed box surround, finished to match adjacent surfaces. Refer LAHC development brief for arrangements for apartments.

Mechanical services

Air conditioning (AC)	AC is to be provided, with solar power, for certain climate zones, refer LAHC Heating and Cooling Policy . For all other dwellings, make provision for AC to be installed by the tenant. Ensure condensate drains are provided to appropriate locations and drained using falls to tundish over sewer service (no pumps). Detail facade penetrations to retain facade weathertightness. Refer to the LAHC Specification for further detail.
Exhaust fans	Provide externally ducted exhaust fans to bathrooms, WCs and laundry rooms, fitted with humidity sensors or linked to light switch or dryer GPO in accordance with the LAHC Specification .
Car park exhaust	Wherever possible, design basement car parking to allow for natural ventilation. If mechanical ventilation is required, preference plenums over jet fans.

Electrical services

Photovoltaic (PV) arrays	Required provision of solar systems, extent of service and metering conditions are set out in the LAHC Heating and Cooling Policy and LAHC development brief .
Boards and subboards	All dwellings to be protected by residual current devices (RCDs). Where dwellings are LHDG silver level, seniors housing or are adaptable, locate distribution boards in a cupboard at an accessible height.
Appliances	Provide electric cooktop, wall oven and externally ducted rangehood, refer to the LAHC specification .
Light fittings and ceiling fans	Allow at least one surface-mounted light point per room and per balcony to suit furniture layout, fitted with LED lamp. Provide LED strip lights to underside of overhead kitchen cupboards, switched with above-bench GPO. All LED lighting to be 3000°K (warm white). Ceiling fans to be provided to living areas and bedrooms in line with LAHC Heating and Cooling Policy .
Switches and general power outlets (GPOs)	All light switches to be 1000 mm above finished floor level (AFFL) (± 100 mm) and aligned with door handle. GPOs to be located between 600–1100mm AFFL. Provide 2 x double 10-A GPOs per room; with additional outlets in kitchen and laundry where required for appliances.
Comms (data + TV)	Provide NBN network termination device (NTD) in each dwelling. Install data point and TV point in living room and main bedroom.
Security + CCTV	Provide CCTV, intercom and access control only when required by LAHC development brief . Strategic use of external LED lighting with movement sensors to be discussed with LAHC during design development.
Smoke alarms	All required smoke detectors to be hard-wired.

Vertical transportation

Lifts	Refer to the LAHC Lift Policy for appropriate lift type, numbers and minimum dimensions for the range of LAHC developments. Provide redundancy for developments 4 storeys or greater.
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Waste services

Waste servicing and facilities	Provide waste facilities in accordance with local council requirements and to ensure waste can be collected within council's regular service. Allow for source separation of waste from recycling, including organic (green and food) waste recycling. Plan waste storage to minimise amenity impacts (odour, acoustic) on neighbours, residents and communal space. Minimise the visual impact to the street through careful integration, and consider accessibility for tenants with mobility issues. Waste chutes are appropriate for developments of 4 storeys or greater. Avoid E-diverter chutes which can cause maintenance issues when misused.
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Attachment C

Homes NSW Practice Note:
Implementing air conditioning (AC) & photovoltaic (PV) in new dwellings

Housing Portfolio – Implementing Air Conditioning (AC) & Photovoltaic (PV) In New Homes NSW Dwellings

This Practice Note aims to ensure that Air Conditioning (AC) & Photovoltaic (PV) is provided for all new Homes NSW dwellings

On 26 March 2024, the Housing Portfolio, Executive Committee endorsed the inclusion of Air Conditioning (AC) and Photovoltaic (PV) in all new dwellings in all climate regions.

To ensure our obligations are met and to assist in implementing this decision Portfolio Strategy and Origination (Portfolio Services) has created this Practice Note.

This Practice Note will be reviewed yearly.

The agreed approach:

- Housing Portfolio to install and maintain energy efficient reverse cycle air conditioning units and solar photovoltaic systems to all new dwellings, where possible.
- Photovoltaic systems will be required to offset the energy and operational costs of not just residential common areas, but also of individual dwellings to reduce the tenant's energy bills, where possible.
- Air conditioning to be installed to heat and cool living rooms and to be extended to other rooms, where possible.

Implementation of Decision

To guide the implementation **from 20 May 2024**:

- All A Papers to include AC and PV for all new supply dwellings.
- All projects in design before and at AM2 must include AC and PV.
- All B Papers to include AC and PV.
- All projects at post B Papers/LOA/Tender can proceed unamended. AC and PV should be considered as a variation during the construction phase on a case by case basis.

There may be circumstances where there will be exceptions to the above approach. This should be discussed with your Executive Director and if required submitted to the P&IC for a decision.

Key Aspects to be Considered

Air Condition to comply with NSW Land and Housing Corporation – Component Requirements 2023

Part 1.6.9 Reverse Cycle Air Conditioning, general standards

- Meet current Australian Standards:
 - Wall or floor mounted
 - Cooling capacity minimum 2.5 kw to maximum ≤ 7 kw
- Energy Star Rating:
 - 2.5 kw cooling model- minimum 5 star cooling, minimum 3 star heating
 - 3.5 kw cooling model – minimum 4.5 star cooling, minimum 3.0 star heating
 - 5.0 kw cooling model – minimum 4.5 star cooling, minimum 2.5 star heating
 - 6.0 kw cooling model – minimum 4 star cooling, minimum 2.5 star heating
- Minimum number of fan speed 4.
- Indoor noise ≤ 50 dBs.
- Outdoor noise ≤ 60 dBs.
- Single Phase 240 V.
- Controller to be hard wired. Remote controls only supplied where directed.

Photo Voltaic Panels to comply with NSW Land and Housing Corporation – Component Requirements 2023

Part 1.6.10 Solar Photo-Voltaic Panels

Photo Voltaic Panels (all models)

- Listed on Clean Energy Council (CEC) Approved Modules Database and to current Australian and International Standards.
- Efficiency $> 15\%$.
- Mean measured power per panel > 250 w, with Performance Ratio of $\geq 90\%$ and/or Temperature Coefficient of $\leq 0.5\%$. Life cycle testing to show that performance in not significantly diminished over the power generation life of the panel.
- Generate Small Scale Technology Certificates (STC's) and be listed on the Clean Energy Council list of approved components.
- Compliant with IEC 61215, IEC 61730 and UL 70.
- Anti-reflective coating.
- Frame post cut anodized Aluminium screw or weld fixed (tested to withstand cyclonic wind).
- Operating temperature from minimum – 25°C to maximum 85°C .
- IP67 rated junction box on each panel.
- Roof mounted isolators to be side mounted.

Solar Inverter (Fixed Voltage Inverter models)

- Listed on Clean Energy Council (CEC) Approved Modules Database and to current Australian and International Standards.
- Optimal Efficiency > 95% DC/AC Conversion.
- Suit outdoor or indoor installation.
- Ambient operating temperature range from minimum – 25°C to > 50°C.
- Minimum IP65 rating.

	Position	Date Endorsed
Prepared & endorsed by:		
Prepared by	Peta Baker, a/Director Portfolio Services	10 May 2025
Endorsed by:	Yolanda Gil, a/ED Portfolio Strategy and Origination	10 May 2025
Endorsed by:	Peter Brackenreg, ED Delivery South	
Endorsed by:	Naveen Chandra, ED Delivery North	
Endorsed by:	David Johns, a/ED Integrated Projects	
Endorsed by:	Mark Byrne, ED Portfolio Management Assets	10 May 2024
Endorsed by:	Vera Afful, a/ED Finance and Reporting	

Attachment D

Homes NSW Resilient Landscape Guide

Resilient Landscape Guide

Homes NSW
April 2024





We are all,
always,
on Country

Acknowledgement of Country

The Department of Communities and Justice acknowledges the Traditional Custodians of the land and pays respect to Elders past, present, and future. We honour Australian Aboriginal and Torres Strait Islander peoples' primary cultural and spiritual relationships to place, and their rich contribution to our society. To that end, all our work seeks to uphold the idea that if we care for Country, it will care for us.

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Tree canopy
Retained existing mature trees provide cooling & amenity, and help developments sit well in their context.

nsw.gov.au/homes-nsw
Title: Homes NSW Resilient Landscape Guide
Version: 02

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Introduction

Document purpose

The Homes NSW Resilient Landscape Guide assists in the creation of high-quality, sustainable landscape spaces for our tenants, by providing guidance to assist project teams achieve best practice landscape design on all Homes NSW development types.

The Guide is part of a suite of documents promoting design quality at Homes NSW. It complements the minimum provisions set out in the 2023 LAHC Design Requirements by providing guidance on Homes NSW design standards.

Although this document has no statutory weight and does not become a matter for consideration for planning assessment like the Housing SEPP or the ADG, it is Homes NSW policy and is applicable to all new projects and major redevelopments.

Construction quality, performance standards, installation, warranty and handover requirements are covered in other specification documents.

The document structure matches the LAHC Design Requirements, with 2 main sections. Each subsection has an introduction, the requirement (from the LAHC Design Requirements) and design guidance. The design guidance includes recommendations and may also include a numeric benchmark.

Landscape considerations

Sense of place

- Beautiful and comfortable places for tenants
- Design and plant selection is site and location specific and climate resilient
- Good relationship between the landscaped ground plane and the built form

Good neighbours

- Creates positive rapport with neighbours
- Contributes to character and amenity of the local area, streetscape and neighbourhood

Sustainable and low maintenance

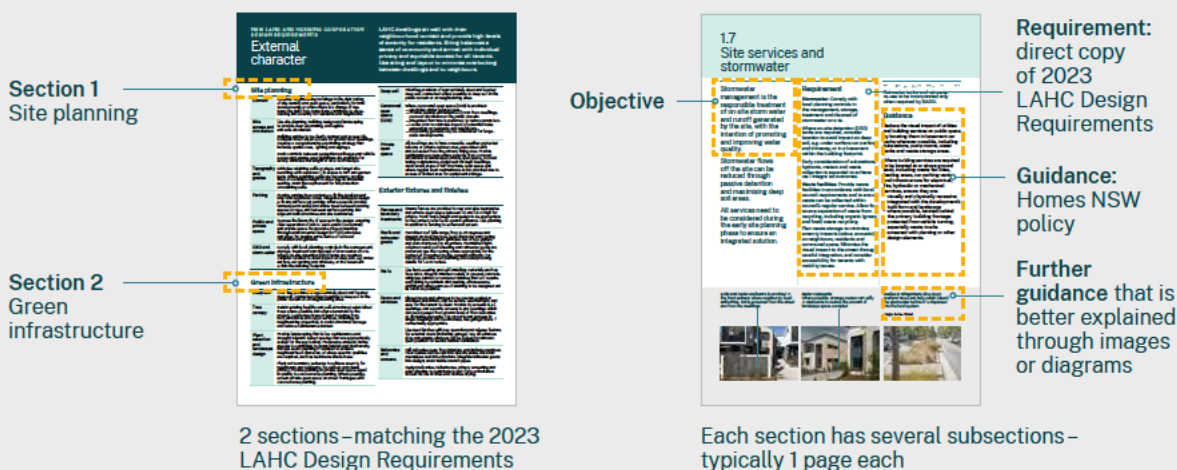
- Enhances the natural environment and urban ecology
- Integrates environmental and financial sustainability
- Designed for the whole life of the project (40 year minimal-maintenance period) and considering the long term design impact.

Quality landscape design is a major factor in creating beautiful places for our tenants to live, providing outdoor space for respite and relaxation, and opportunities to garden and grow food.

Landscape design can also enhance environmental performance and tenant comfort by providing shade and shelter and including diverse, seasonal planting.

Homes NSW developments can contribute to improving biodiversity and creating connections across the urban landscape to support native plants and wildlife.

Document structure



1

Site planning

Homes NSW dwellings should sit well with their neighbourhood context and provide high levels of amenity for residents. Siting should balance a sense of community and arrival with individual privacy and equitable access for all tenants. Use siting and layout to minimise overlooking between dwellings and to neighbours.

— NSW LAHC Design
Requirements 2023



Richards Street Adamstown, Kennedy
Associates Architects and Taylor
Brammer Landscape Architects.

1.1

Connecting with Country

Thinking differently about Country means prioritising Country.

Gaining cultural awareness is the first critical step towards connecting with Country.

Gaining an understanding of Country requires leadership from Aboriginal people.

— Connecting with Country Draft Framework, GANSW 2022

Guidance

Develop an understanding of Country as defined by local Traditional Custodians and knowledge holders.

Refer to the Connecting with Country Framework (GANSW 2023) and the [DPHI Practice Note on engaging with Aboriginal communities](#).

As an important first step, visit the site at the beginning of the project.

Before you start designing the project, consider the following questions, and include the information in your Site Analysis:

- What were the site attributes before colonisation in 1788?
- Who are the Traditional Custodians of the land where the site is located?
- What is the Aboriginal history within and nearby the site?
- How will you acknowledge the past and living cultural heritage of the place?

Sorry Day 2019, Australian Botanic Garden Mount Annan.
Image: Victoria Ngu.



1.2 Context

Key elements that contribute to neighbourhood context and character include street layout and hierarchy, blocks and lots, built environment and natural systems including tree canopy, open space and gardens.

Good design responds and contributes to its context, including these key natural and built features and the influence of social, cultural, economic and environmental factors. Each site, and the elements within a site, are part of a network or system.

An analysis of the context and the project site is the critical first step in the design process. Describing the elements of the locality, the conditions affecting the site, and identifying opportunities and constraints can reveal how the new development should respond to and enhance the quality and character of the area.

Requirement

Consider neighbouring buildings in the distribution of site density and open space, particularly for infill developments or where there is a change of use. Sensitive built form transitions contribute to placemaking and amenity for residents and neighbours.

— NSW LAHC Design Requirements

Guidance

Undertake a comprehensive site and context analysis including cultural, natural and built environment elements. Ensure that the site analysis extends beyond the immediate site property boundary.

The site analysis will be underpinned by the understanding of Country.

Respond to existing natural features, such as mature trees, rock formations and significant vegetation.

It is expected the site analysis will form the basis of whole-team design collaboration.

Thorough site analysis underpins a place-specific design response appropriate to the context, and landscaping is a key contributor to creating desired future character.

Site constraints

Architect: DJRD, Landscape architect: Site Image.



- EXISTING SCHOOL BUILDINGS
- OTHER USES ON SITE
Green Trees ELC & The Waratah Centre
- STEEP TOPOGRAPHY
Existing benched levels & steep slope
- HAZARDOUS MATERIAL
Potential contamination in existing earthworks
- NO CONSTRUCTION ACCESS – STAGE 1
Limited access to keep School operational
- MANSON ST & STURT ST CORNER
Steep grade at key community address

Site opportunities

Architect: DJRD, Landscape architect: Site Image.



- VIEWS
High vantage point overlooking Sturt Park
- IMPROVED SITE CONNECTIVITY
- REINSTATE NATURAL OVERLAND FLOW
- LINKING LEARNING LANDSCAPES
Telopea PS, Sturt Park, The Ponds Creek
- BIODIVERSITY
Engage with & connect existing Landscapes
- SOLAR ACCESS
Large area despite future development
- SCENT GARDEN
Retain and share with community
- MATURE EUCALYPTUS TREES
- COMMUNITY CONNECTIVITY
Future Telopea Civic Centre
- COMMUNITY GARDEN
Opportunity to retain and improve
- PROPOSED SHARED PATH
Parramatta City Council

1.3

Site access and circulation

Site access and circulation refers to the placement of landscape spaces and the circulation network in relation to existing natural features, context, built form and neighbouring properties.

Requirement

Use site planning, building design and landscaping to provide clear wayfinding, and legible and safe circulation.

Building entries to be clearly defined and accessible. Consider direct street access for ground floor dwellings.

Develop a comprehensive wayfinding strategy that includes spatial cues, lighting and signage.

Avoid conflicts between pedestrian pathways and vehicle access and ensure good sightlines are available for safety. Minimise the length of on-site driveways.

Express the hierarchy of spaces in the design, ensuring clear separation of public, semi-public (communal) and private space. Incorporate CPTED principles and allow for passive surveillance of common circulation and gardens.

Common pathway to main entry minimum 1.2 wide; wider for apartment buildings.

— NSW LAHC Design Requirements



Entry: Maximise the number of entries that face the street to improve accessibility, passive surveillance, and opportunities for activation.



Wayfinding: Use colour, materials, textures and planting to promote wayfinding.



Ramps / walkways: Preference walkways, step ramps and kerb ramps to 1:14 ramps, to avoid handrails and TGSIs, particularly in a landscape setting.

Guidance

Arrange uses, entries and private open space in response to the existing pattern and uses of the neighbourhood, and the neighbouring street network.

Establish a clear circulation hierarchy and consider the design of the tenant's journey from the public street through to their private space.

Maintain visibility through lift lobby and to open space beyond where possible.

Where ground floor dwellings have direct street frontage, target an accessible path of travel to the dwelling entry, or provide alternative accessible entry from a common area.

Use site planning to take advantage of natural levels where possible, to minimise stairs and ramps.

Minimise conflicts between different user groups pedestrians, cyclists and vehicles. On large projects with frequent vehicle movements, separate pedestrian pathways and vehicle movements,

with planted verge between. Where possible on smaller projects, utilise shared zones to minimise the extent of hard surfaces. Where access is combined, provide signage to limit speed and vary colour or material to indicate preferred pedestrian path.

Minimise the width and number of vehicle access points, to minimise disrupting the footpath and kerbside parking.

Visual impact of long driveways should be minimised through changing alignments and screen planting. Add trees or planting at the end of driveways to provide green outlook when viewed from the street.

There are four main principles of Crime Prevention through Environmental Design (CPTED): natural surveillance, access control, territorial reinforcement and space management. Incorporating these four principles of CPTED can help to create a safe and secure environment that encourages activity, vitality and viability.



Figure 1. Path widths: Ensure path widths are appropriate for the application. Consider 2 m width where people pass.



Driveway screening: Planting between driveways and boundary fences can screen noise, reduce visual impact and soften hard edges. This project would be improved by tree and screen planting at the end of the driveway and a wider planting bed on the side boundary.

1.4

Topography and setbacks

Requirement

Minimise retaining walls or steps, and target site benching with maximum 1:10 slopes to turf and garden beds.

Where retaining walls are necessary, provide them at a suitable height to allow use as incidental seating.

Avoid requirement for fall protection on retaining walls.

— NSW LAHC Design Requirements

Guidance

Minimise cut & fill. Retain and protect natural soil profiles wherever possible to support existing vegetation.

Avoid external ground levels that are higher than adjacent internal floor levels i.e. where the external wall becomes a retaining wall. If unavoidable, proposed construction detailing and waterproofing must be approved by Homes NSW.



Grading: Garden beds that are not for use by residents can be steeper than 1:10, up to 1:4.

Beane Street Gosford. Architect: Stanton Dahl, Landscape architect: Site Image.

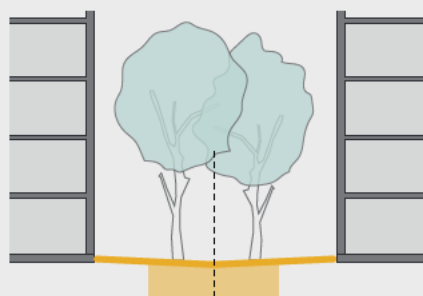


Figure 2. Side setbacks: Side setbacks are planted to provide outlook, visual privacy and screening. Deep soil adjacent the boundary can help create connected deep soil with neighbours.



Retaining wall seating: Use retaining walls for incidental seating, where useful, particularly adjacent communal open space.

Integrate walkways: Where they are required, integrate walkways or ramps into the landscape design.

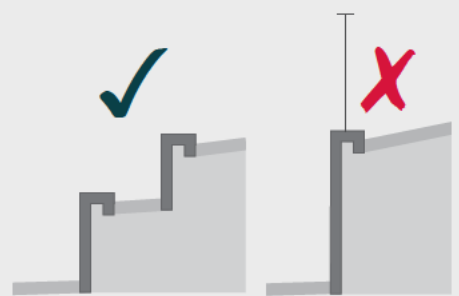


Figure 3. Minimise height of retaining walls: Limit height of retaining walls to avoid safety rails, i.e. maximum 950 mm high for areas that are generally not accessed. Areas subject to more frequent use by tenants should avoid changes in level of more than 600mm without barriers to minimise fall risk.

1.5 Parking

Integration of car parking has a significant impact on site planning, streetscape, landscape and can also impact building facade design, depending on the project scale.

Vehicle access must be considered in early site planning to balance potential conflicts between traffic patterns, streetscape elements and pedestrian access. Safety is key, and depends on good lighting and sightlines.

Requirement

Provide parking in accordance with the development brief and applicable codes.

Integrate landscape design with any surface car parking.

Where possible provide landscaped break(s) and shade trees between parking spaces or rows, and between surface parking and adjacent built structures and site boundaries.

— NSW LAHC Design Requirements

Guidance

Basement carparking is generally only used on constrained sites due to cost. The development brief will clearly state when basement parking is to be provided.

Consider undercroft parking in lieu of basement parking where appropriate, to minimise use of mechanical exhaust.

Reduce large hard surface areas by maximising efficiency of vehicle swept path movements.

Refer 1.3 for guidance on shared pedestrian & vehicle access.

Provide accessible pathways between the carparking and the building common circulation.

Garden beds provided between car spaces to be minimum 600 mm wide (between kerbs). Increase to minimum 1 metre wide if accommodating tree planting.

Ensure location of carparking and planting allows surveillance from dwellings or common areas for safety.

Generally no gates on driveways, unless required for access control to basement car parking.

Consider potential headlight glare to habitable rooms in designing vehicle movements and window locations, and reduce impact on residents and neighbours by landscape screening if necessary.

Designs should consider developments in technology, and make provision for electric vehicles (EVs).

Locate vehicle access on secondary streets or lanes where available.

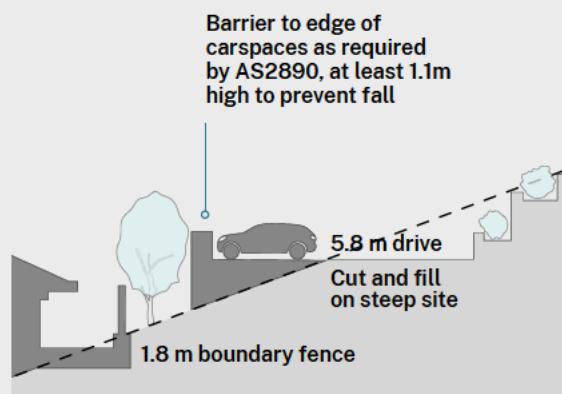


Figure 4. Headlight glare: Ensure adequate screening to minimise headlight glare at boundaries.

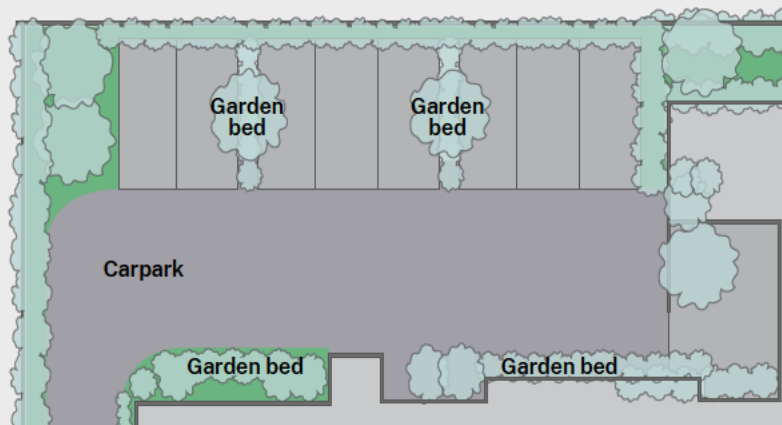


Figure 5. Landscape breaks: Garden beds between groups of car spaces reduce glare and the heat island effect from extensive areas of paving.

1.6

Deep soil

Deep soil zones are areas within the development which consist of natural ground with minimal obstructions above or below and with relatively natural soil profiles.

Deep soil zones with a minimum dimension of 3 metres allow sufficient space for the healthy growth of new trees that will provide canopy cover and assist with urban cooling.

Deep soil zones allow for the retention of existing mature trees, and for the infiltration of rainwater to the water table.

Requirement

Prioritise provision of appropriately sized and located deep soil, connected where possible to deep soil in the public domain or on neighbouring sites.

— NSW LAHC Design Requirements

Guidance

Provide deep soil areas in accordance with Table A:

Table A:

FOR APARTMENTS:
10% of site area for sites < 1,500 m²

15% of site area for sites > 1,500 m²

FOR ALL OTHER DEVELOPMENT TYPES:
15% of site area

Refer Section 2.04 for appropriate volume of soil required to support tree canopy.

Locate deep soil zones so existing significant trees are retained and healthy root systems are developed to support tree canopy, biodiversity and habitat.

Locate deep soil to maximise cooling, shading and privacy benefits to residents, neighbours and the public.

Maximise deep soil by minimising driveways and surface carparking.

Use permeable paving where paving is required in deep soil zones. Refer S2.8 for further guidance on material selection.

Coordinate the building and landscape design with services engineering disciplines to ensure services do not compromise deep soil.

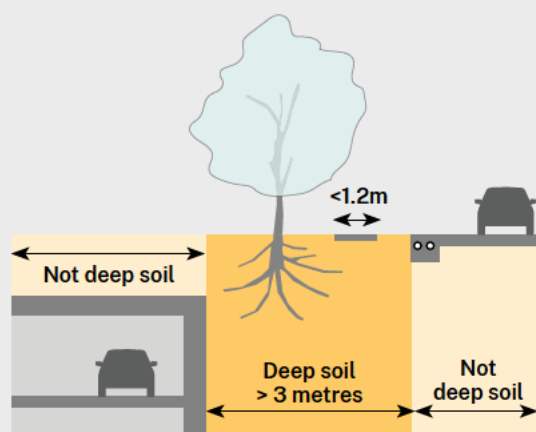


Figure 6. Deep soil definition: A landscaped area with a minimum dimension of 3 metres, connected horizontally to the soil system and local groundwater system beyond, and unimpeded by any building or structure above or below ground with the exception of minor structures. Pathways 1.2 metres wide or less are considered minor structures.

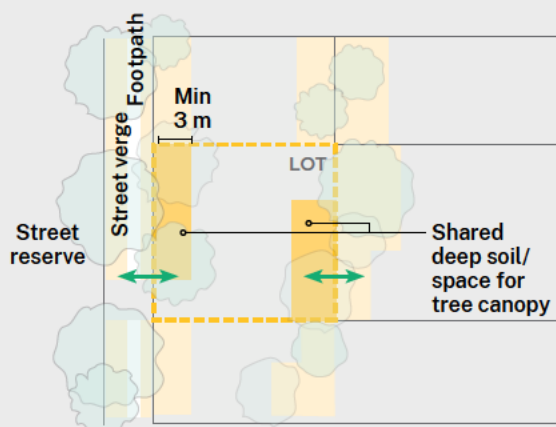


Figure 7. Connect deep soil: Support existing deep soil by co-location of new deep soil.

1.7

Site services and stormwater

Responsible stormwater management reduces flows off the site by reducing the extent of hard surfaces and increasing passive detention and deep soil areas.

Considering stormwater and other site services during the initial site planning phase assists integrated and well-designed outcomes.

Requirement

Stormwater: Comply with local planning controls in the management, storage, treatment and disposal of stormwater on site.

Where on-site detention (OSD) tanks are required, consider location to avoid impact on deep soil, e.g. under surface car parking and driveway, or in a basement within the building footprint.

Early consideration of substations, hydrants, meters and waste collection is essential to achieve well integrated outcomes.

Waste facilities: Provide waste facilities in accordance with local council requirements and to ensure waste can be collected within council's regular service. Allow for source separation of waste from recycling, including organic (green and food) waste recycling.

Plan waste storage to minimise amenity impacts (odour, acoustic) on neighbours, residents and communal space. Minimise the visual impact to the street through careful integration, and consider accessibility for tenants with mobility issues.

Hydraulic services: Provide garden tap(s) in both private and common garden areas, including upper balconies. Avoid situations where a hose would need to cross common pathways, driveways or on-grade car parking. Irrigation systems are not to be installed.

Rainwater tanks and rainwater re-use to be incorporated only when required by BASIX.

— NSW LAHC Design Requirements

Guidance

Reduce the visual impact of utilities and building services on public space by locating them in basement car parks wherever possible, including substations, pump rooms, water tanks and waste storage areas.

Where building services are required to be located at or above ground level, including waste facilities, loading areas, car parking vents and infrastructure for electrical, fire, hydraulic or mechanical services, ensure they are:

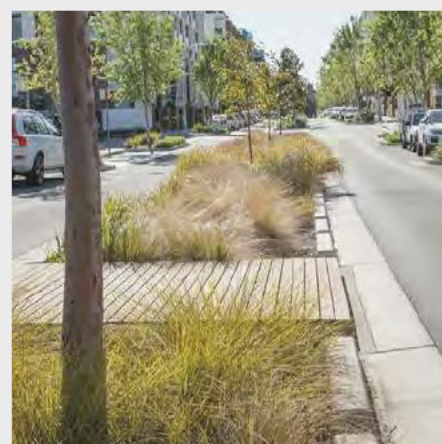
- visually and physically recessive
- integrated with the development's built form and landscape
- where possible, located behind the primary building frontage
- protected from vehicle turning, especially waste trucks
- screened with planting or other design elements.



A bin and meter enclosure is provided in the front setback where required by local authorities, but is screened from the street and from the dwellings.



Meter cupboards: Where possible, arrange meters vertically in cupboards to reduce the amount of landscape space occupied.



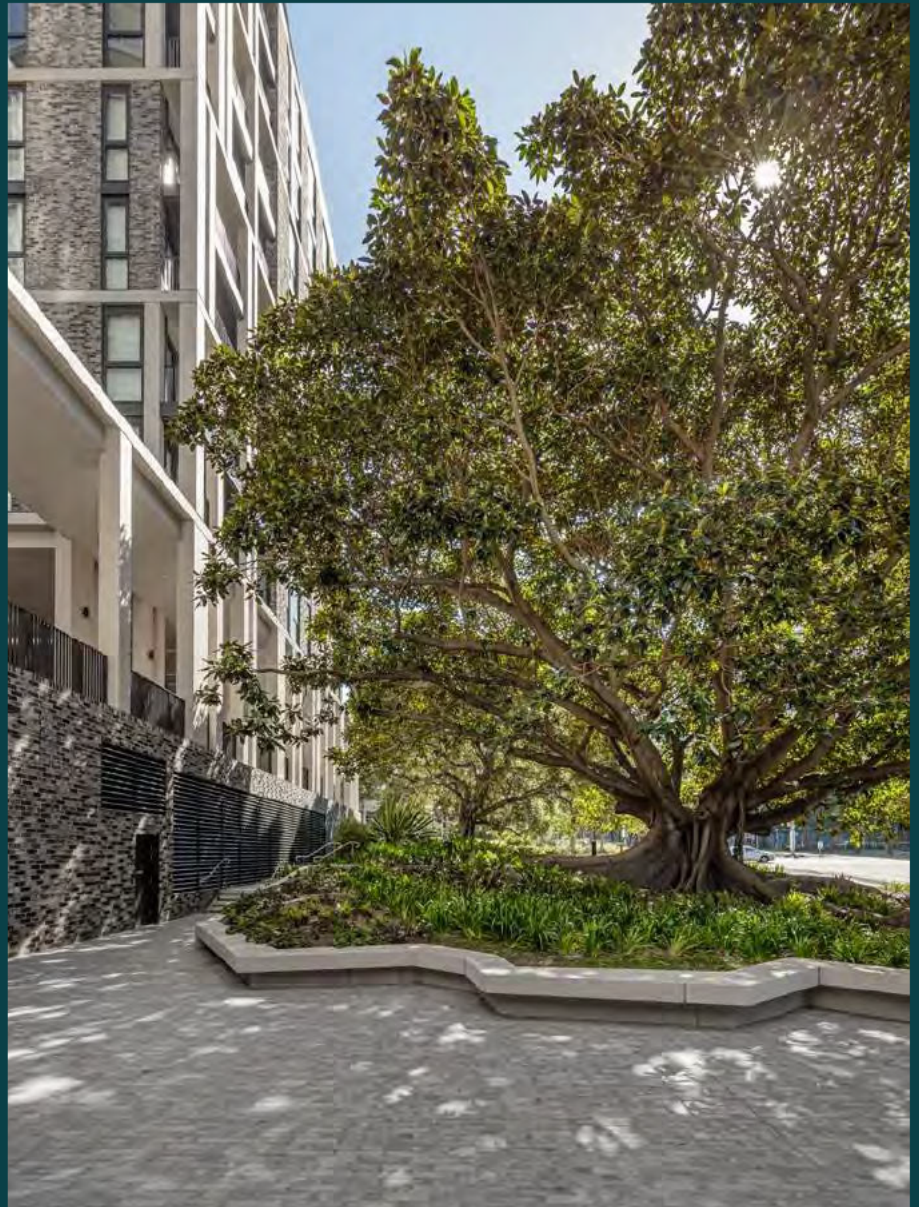
Swales & raingardens slow down overland flows and help polish (clean) the stormwater before it is dispersed into the local system.

Image: Simon Wood

2

Green infrastructure

Trees and planting in both streets and gardens contribute significantly to neighbourhood character. The inclusion of diverse, locally indigenous and appropriate habitat planting can be done at all scales of the development, from dedicated communal areas and setbacks to private gardens, courtyards and balconies. Even the smallest pockets of vegetation can contribute to the overall system and play a role in attracting wildlife and creating habitats.



Pavilions at Sydney Olympic Park
by architect BVN and landscape
architect 360 degrees.
Image: Murray Fredericks

2.1 Spatial planning and street interface

Built form and landscape interfaces with public space can support safety by encouraging passive surveillance and activating the street. Interfaces at the ground plane are particularly important.

Requirement

Express the hierarchy of spaces in the design, ensuring clear separation of public, semi-public (communal) and private space. Incorporate CPTED principles and allow for passive surveillance of common circulation and gardens.

Prioritise good transitions between public and private space at the street frontage.

Front fence height and design to be appropriate to the context; refer local Council guidance.

Use planting in addition to fencing to soften and screen.

Provide mail boxes for each dwelling in accordance with Australia Post's Point of Delivery Policy.

— NSW LAHC Design Requirements

Guidance

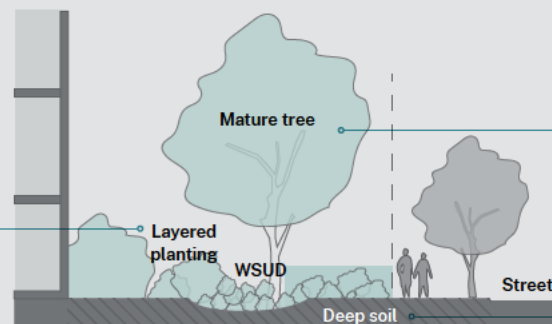
Allow for deep soil in the front setback to make a positive contribution to the streetscape.

Locate building services, bin storage and general services areas away from the primary street setback or screen or enclose to reduce impact.

Limit the length of blank and solid walls, particularly along street frontages. Solid walls can contribute to pedestrians feeling unsafe, by blocking surveillance and reducing activation of the footpath.

Figure 8.

Street character: Respond to the character of the street and where appropriate use layered and complementary plant species.

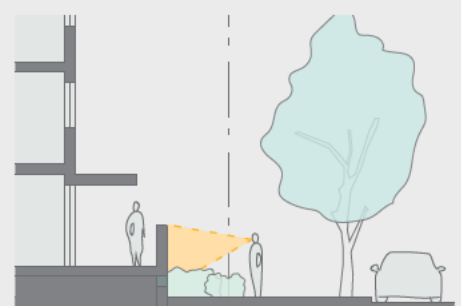
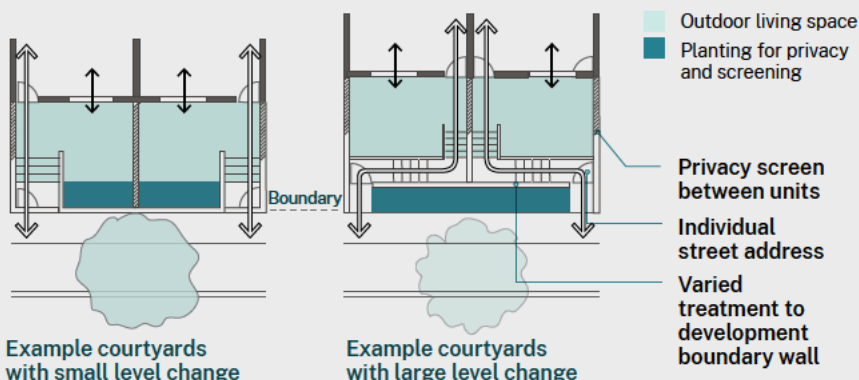


Visual screening: Reduce the visual dominance of the building with well planted setbacks that enable mature tree canopy cover.

Shared deep soil: Allow for deep soil in the front setback to make a positive contribution to the streetscape. Co-locate with deep soil in the street reserve.

Figure 9. Private open space on street.

A change in level from the footpath to a ground floor apartment by up to 1m can enhance privacy while allowing surveillance of the street. Where ground floor dwellings are elevated, consider a landscape buffer to soften the building edge. Where universal access to an individual unit is not possible from the street front, ensure alternative access from common circulation to the side or rear.



2.2

Plant selection

Planting can be used to create and define spaces, screen building facades and create visual interest.

Requirement

Provide landscaping that is low maintenance and drought tolerant. Select species that are appropriately scaled for the application. Preference endemic native species to contribute to fauna habitat and biodiversity, but use exotic planting if required to achieve neighbourhood character, or where specific qualities are required, such as deciduous shade trees.

Plant out boundary setbacks to achieve amenity for neighbours and residents, for outlook and visual privacy. Provide planting in private open space equal in quality to common area planting. Where possible, screen private open space on street frontages with common area planting.

Where possible, screen private open space on street frontages with common area planting.

— NSW LAHC Design Requirements

Guidance

Identify appropriate species for site conditions and scale of development. Consider climate change and impact on plant selection, and suitability for the project site, paying particular attention to flood and fire exposure. Refer local council guidance and websites like [whichplantwhere](#) which provide species selection recommendations.

Tree species are to be selected with care. Particularly where closer to dwellings, consider leaf litter loading on roofs and gutters, species particularly prone to pests or excessive branch dropping risking damage to people or property, or species that drop fruit, flowers or seed pods over accessible pathways, causing future trip hazard risk.

Incorporate a range of planting types at various scales, including trees, shrubs and groundcovers.

Plants can be layered to create a rich and diverse garden setting.

Utilise landscape planting in setbacks to create an attractive visual outlook, as well as enhance habitat and ecology.

Use vegetation to provide a buffer between dwellings, private open space, carparking and neighbouring properties.

Avoid small areas of turf which are difficult to maintain; preference mass planting, especially under trees where turf can struggle to thrive.



Planting for screening & amenity

Mature tree retention, and common area planting in front of private open spaces, achieves good outcomes for both the street and the street-facing dwellings.



Planting choices

Small areas of turf like this can be difficult to maintain, and mass planting would be preferred in this instance.

2.3

Tree canopy

Tree canopies support sustainable, liveable and cool neighbourhoods with more shade and cleaner air, providing more beautiful places to live.

Domestic use of air conditioning in NSW is projected to increase by 90 per cent by 2050. Trees can reduce household energy costs — direct tree shade is shown to reduce household cooling kilowatt hours by 30 per cent.

Retaining trees and replenishing removed trees to avoid reducing net canopy coverage contributes to the NSW Government's Greater Sydney 40% canopy target.

Requirement

Retain existing healthy and well-structured established trees where possible and where beneficial to the project.

Locate new trees at least 3 metres from built structures and major services, including on neighbouring properties, to avoid structural damage and reduce maintenance burden.

— NSW LAHC Design Requirements

Guidance

Wherever possible, plant new trees to create tree canopy to provide shade and amenity.

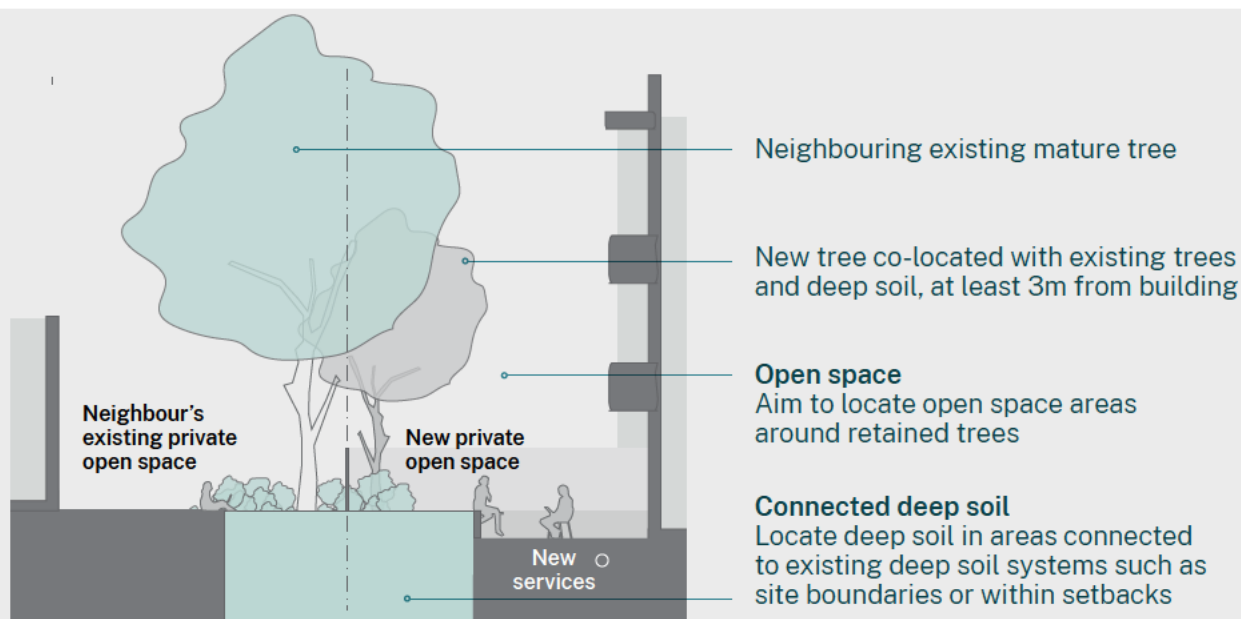
Existing mature trees provide the best and most immediate form of canopy and contribution to habitat.

Retain existing trees in front and rear setbacks where possible to minimise the impact of the new development.

Locate building envelopes, major services, basements and driveways in order to maximise the number of trees able to be retained on site, particularly high and medium retention value trees. Tree protection zones (TPZ) and structural root zones (SRZ) are to be considered early in the site planning stage. Where trees are to be retained, generally aim for maximum encroachment of 10% into TPZ and no SRZ encroachment. Additional encroachment may be possible with detailed arborist input.

In projects with a high number of mature high-retention trees, roof and stormwater designs will require early consideration to minimise maintenance issues and ensure pipework doesn't disrupt the TPZ & SRZ.

Figure 10.



Where it is not possible or desirable to retain existing trees, aim to replace with new trees so there is no net-reduction in canopy cover.

Refer to Section 2.2 for guidance on species selection.

Co-locate trees and deep soil wherever possible.

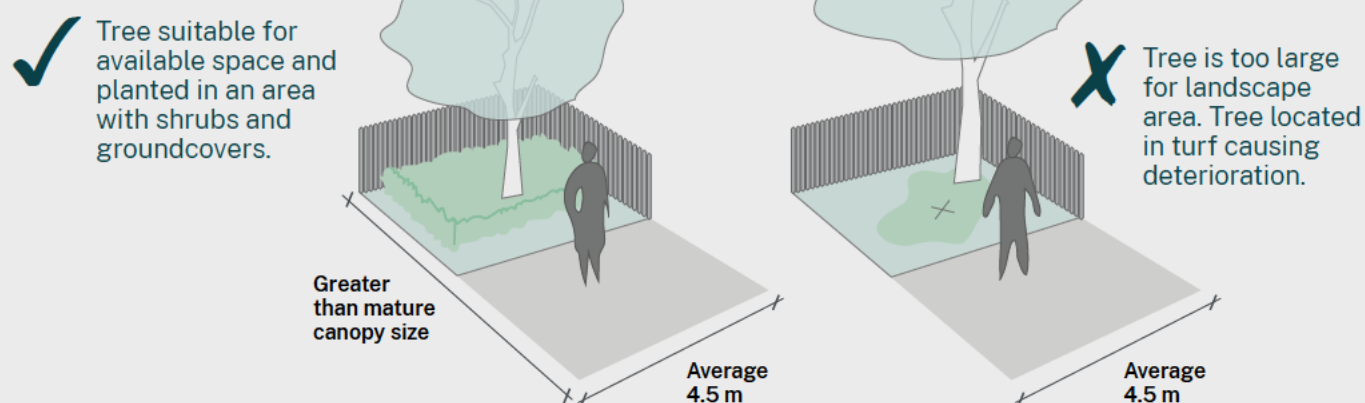
Group trees together, to promote mycorrhizal networks. There is growing evidence that trees share water and nutrients through these networks and use them to communicate distress signals about drought and disease, for example, or insect attacks.

Consider the mature height and spread of any new trees when positioning in the landscape, and accommodate future desired views and solar access.

Ensure that the crown of trees near car parking permits surveillance from dwellings and common areas.

Install all site services (sewer, water, drainage, power etc.) before tree-planting.

Figure 11. Scenarios indicating appropriate tree and mass planting in backyards



2.4 Soil depth, quality and volume

Appropriate soil provision including depth, volume and quality, will improve the viability of all planting and build in greater flood and drought resilience, thereby maximising the visual quality of landscape spaces.

Guidance

Ensure that the soil proposed for each condition is fit for purpose and complies with minimum width, depth and volume requirements shown in Table B.

Soil volume does not need to be rectangular. It relates to the total volume of soil that tree roots may access.

Use soil suited to the range of plant types and species proposed in the development.

Improve the quality of site soil by digging in organic matter. This can help aerate the soil and increase permeability. Organic matter should only be used in the top 300 mm of soil in areas of mass planting.

Consider engaging a soil scientist to test existing soil and / or design specific soil mixes for each development.

Ensure garden beds are free draining.

Garden bed widths: 300 mm minimum, 600mm preferred. If isolated between hard surfaces, 1 metre preferred.

Turf width: 600 mm minimum.

Table B

Planting type	Mature diameter	Soil volume per tree	Soil area on structure	Min. depth (mm)
Small	6 m	9 m ³	3.5 m x 3.5 m	800
Medium	8 m	35 m ³	6 m x 6 m	1000
Large	12 m	120 m ³	10 m x 10 m	1200
Shrubs	-	-	-	600
Ground cover	-	-	-	450
Turf	-	-	-	200

Note: these figures are drawn from the ADG and are in accordance with industry best practice. Any sub-surface drainage requirements are in addition to the above minimum soil depths. The volume of soil required for planting differs depending on the type of planting, the type of soil and the amount of water that the tree receives. An arborist or soil scientist can provide site specific advice about the soil volume required for different situations & planting.

Figure 12. Soil profile details for planting on structure

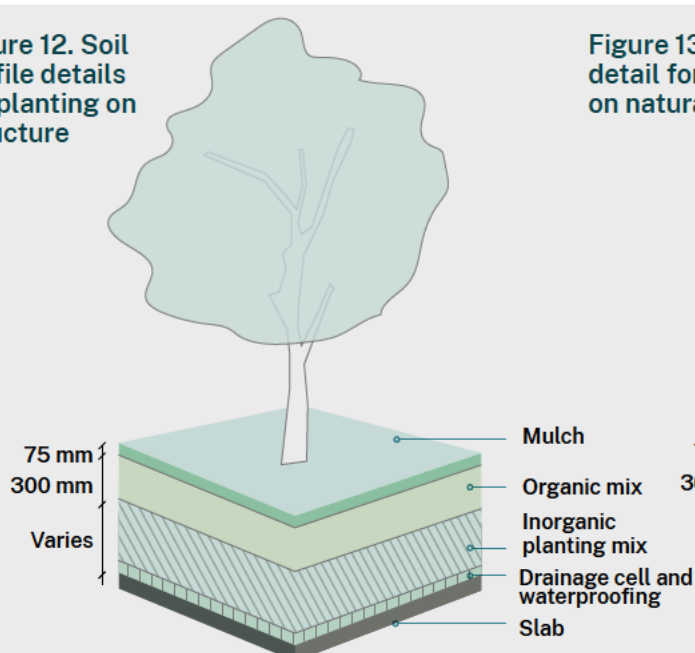
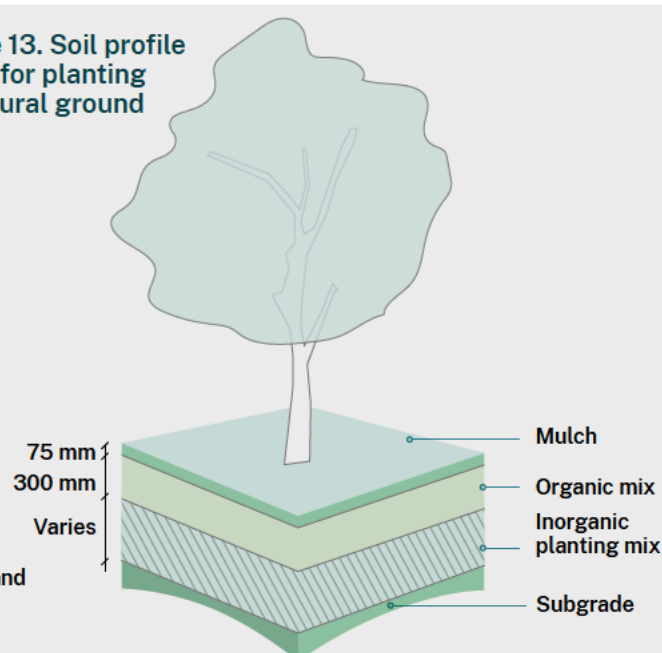


Figure 13. Soil profile detail for planting on natural ground



2.5 Communal open space

Communal spaces benefit residents through economies of scale and by providing opportunities to meet fellow residents and build a sense of community.

Communal open space supports a broad range of activities related to the domestic and social life of households that are unable to be accommodated within individual apartments or in publicly accessible open space.

Requirement

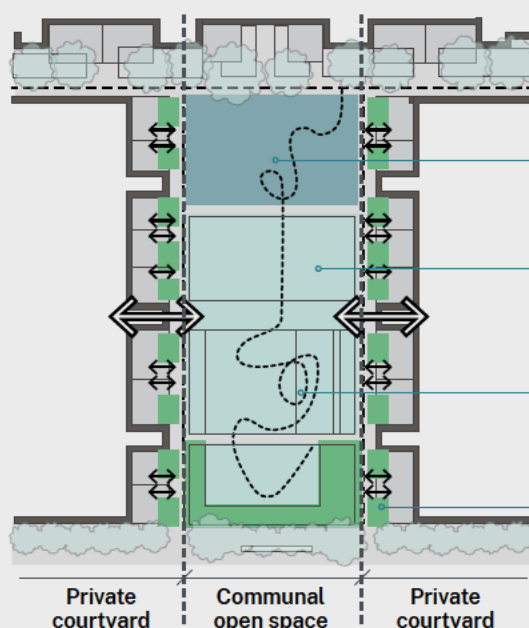
Where communal open space (COS) is provided:

- Maximise winter solar access
- Provide passive surveillance of communal open space from dwellings, common circulation or the public domain.
- Integrated furniture preferred to reduce vandalism.
- Locate communal open space to minimise impact of potential noise generation on residents and neighbours.
- Communal gardens may be considered for large scale developments.

— NSW LAHC Design Requirements

Figure 14. Example of communal open space with possible landscaping features and a range of settings.

- Communal gathering area
- Passive recreation area
- Buffer planting
- ↔ Direct access to open space from building core
- ← Secondary access
- Resident-only common circulation
- ↔ Private courtyard entry



Communal gathering area: Shade and seating amenity. Communal gathering areas, BBQ or all-abilities play equipment where called for in the project brief.

Passive recreation area: large area of open lawn

Recreation space that is more suited to quiet conversation or contemplation

Buffer planting: planting for privacy and screening

Guidance

Provide suitably sized and thoughtfully located communal open spaces that provide opportunities for plentiful landscaping and enhanced amenity.

Unless a greater area of communal open space is required by other codes like the Apartment Design Guide (ADG), target provision of at least 8 sqm of communal open space per dwelling, up to 25% of the site area, ideally consolidated in a single usable area.

Ensure at least 50% of the principal usable communal open space area receives 2 hours solar access at anytime between 9 am and 3 pm on 21 June. Protection from strong wind is also desirable.

Design communal open space to be safe and resilient, easily accessible to all residents, cater for a range of needs, and be easy to maintain. Refer to Section 2.7 Materials for outdoor fixtures.

Passive landscaped communal open space can be as valuable as spaces designed to support gatherings. These spaces allow social housing tenants to walk their dogs safely, or just enjoy being closer to nature, without the risk of large noisy gatherings which impact adjacent tenants.

If a communal edible garden is to be included, ensure clear delineation from adjacent inedible planting.



Communal open space: This Homes NSW project shows a communal open space provided under a high-value retention existing tree. A bench seat (with back and armrests) can be a better solution for smaller projects as it doesn't encourage gatherings which can have noise impacts.



Raised garden beds: Where shared edible gardens are provided, ensure they are raised and some parts are adjacent to an accessible pathway for gardeners with mobility issues. Locate away from fall barriers so not to facilitate climbing.



Safety: Open space is safer if it can be overseen from windows, balconies and common circulation.



Flexible & adaptable: The best communal spaces can be used in different ways. Locate centrally with good surveillance to foster a sense of safety and shared ownership.

Anne Street Garden Villas, Anna O'Gorman Architects, Landscape by Lat27 Design Studio Landscape. Image: Christopher Frederick-Jones.



Communal open space case study

QLD 2021 Social Housing Guideline
Project by Levesque and Derrick Architects

Brief summary

Space can be used in multiple ways but doesn't encourage large gatherings.

Easy maintenance with robust materials.

Includes raised communal garden bed on accessible pathway.

Functional level footpaths and clear circulation space.

Retaining walls dual function as bench seating. Refer 2.8 Materials and maintenance for guidance on suitable treatment of seating walls.

Central space is visible from a number of vantage points which promotes safety.

1:20 walkways without tactiles incorporated into landscape design

Mounding of soil provides visual interest, potential for play and increased soil depth for tree.

2.6

Private open space

Private open spaces include balconies, courtyards and terraces. These can enhance amenity by extending living areas, providing space for outdoor activities, and giving privacy to interior spaces from the street and neighbours.

Balconies that are safe and appropriately designed can provide space for children to play outdoors. They can also offer residents opportunities such as owning a pet or growing food. They provide a place for drying clothes and storing bicycles.

Requirement

All dwellings are to have a useable, weather-protected balcony or private outdoor area, associated with and accessed from the primary living area. Provide maintenance access where possible from common circulation to landscaped private open space, to avoid taking maintenance equipment through dwellings.

Avoid small areas of turf in private open space and where regular lawn maintenance is not practical due to access or limited area for equipment storage.

Provide fences to rear and side boundaries and private open space between 1.5 and 1.8 metres high for privacy. Front fence height and design to be appropriate to the context; refer local Council guidance. Use planting in addition to fencing to soften and screen.

For dwellings at ground level where a private open space is provided instead of a balcony, the minimum area is 15 m² with a minimum depth of 3m. Include a weather-protected paved area equivalent to the balcony sizes nominated for the dwelling type.

Screen visible utilities and clothes drying.

— NSW LAHC Design Requirements

Guidance

Create useable private open space which is functional, generous, and located adjacent to main living spaces.

Design the interface between public, communal and private open space to promote privacy and comfort for residents, whilst maintaining opportunities for visual connection and outlook to adjacent spaces.

Provide both paving (preferably permeable) and planted areas for ground floor courtyards.

Ensure that planting used in private landscape spaces in the street setbacks responds to and contributes to the street and public domain character.

Where appropriate, provide secondary POS behind dwellings for better privacy and to conceal utilities such as clotheslines, hot water units, etc. from the streetscape.

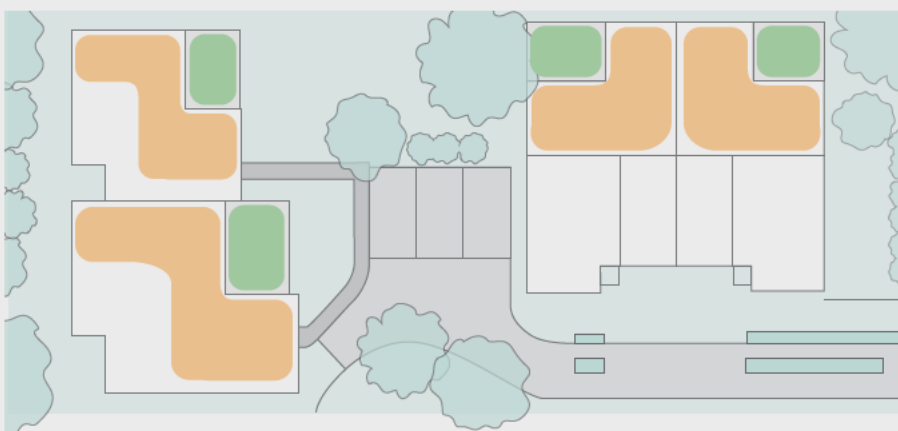
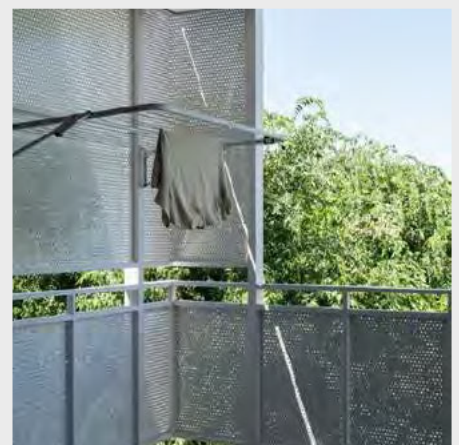


Figure 15. Locate private open space adjacent to main living area for maximum usability

- Orange square: Private open space
- Green square: Living areas



Screened clothesline

2.7 Lighting

Quality lighting enhances the visual appearance, amenity and safety of external spaces and landscaping.

Guidance

Integrate lighting that draws on the landscape and wayfinding strategy. Consider appearance from the street and neighbouring properties.

Provide safe lighting to dwelling entries, pathways, driveways, common and private open space.

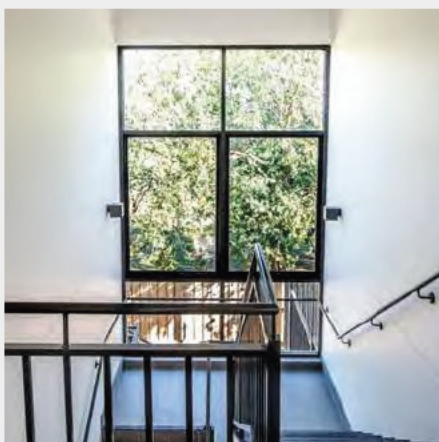
Design fitting location to avoid glare or light spill to neighbours. Low-level lighting preferred to pole lights.

All LED lighting to be 3000° K (Warm White) and designed for easy maintenance.

Locate fittings at a height where they can be maintained without risk of fall from heights.

Integrate lighting fixtures in the landscape and on building walls to minimise bollards.

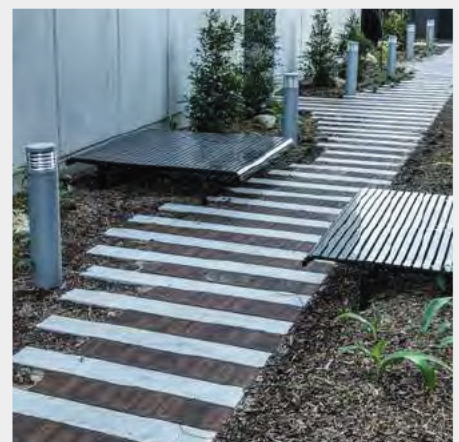
Light diffusers are often vandalised or damaged (deliberately and accidentally). Fittings to be selected with care with guards over diffusers where appropriate.



Minimise light spill: Wall-mounted fittings are safer to maintain than ceiling or pole mounted fittings.



Integrated lighting: Selectively uplighting trees (keeping in mind risk of light spill) can enhance landscape amenity.



Path lighting: Low level lighting can be suitable for accessible pathways and is easier to maintain than pole lighting. Lighting integrated with walls or seating is a good alternative to bollards.

2.8

Materials and maintenance

Material selection for Homes NSW projects is driven by:

- suitability / fit for purpose – durable, robust, universal and able to resist/deter vandalism
- longevity: ease of maintenance, availability of warranties and parts
- sustainability: source and supply chain sustainability including First Nations supply, embodied energy considered against life cycle, recycled and recyclable materials, waste creation, contribution to reflectivity and heat island effect, impact on air quality and habitat
- value for money: initial capital cost, cost of maintenance, availability of volume pricing, and ease of procurement.

The nature of Homes NSW's maintenance contracts also impacts material choice and design:

- Typically, maintenance by external contractors is only provided for common area landscaping. Otherwise, maintenance is the responsibility of the tenant.
- There are some exceptions to this: for example, senior's developments, where common property is maintained by Homes NSW or the property manager.

Understanding the planned maintenance approach at the outset of the project informs appropriate design solutions for maintenance access and complexity, equipment storage and tenant capacity.

Requirement

Use products that are low-VOC and low-allergenic with high recycled content.

Provide a detailed maintenance and access plan for discussion with Homes NSW during design development.

Pits: All grates in trafficable areas to be fitted with anti-slip heelguard. Infill on blind pit covers to match surrounding material.

Guidance

For landscaping walls: preference hard-wearing and self-finished materials such as face brick or block, off-form or precast concrete, or integral finished metals like weathered steel or stainless steel. Minimise painted or rendered finishes.

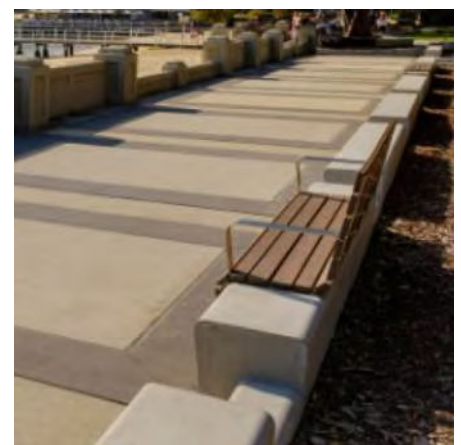
Graffiti: treat all materials including painted surfaces with appropriate anti-graffiti sealer.

Driveways/vehicle access: concrete or exposed aggregate concrete. Bound porous or permeable driveway materials (not granular or loose materials) are permitted where required to retain high-value trees.

Accessible pathways: avoid granular or loose materials like decomposed granite, or unit paving that could be disrupted by subsidence or tree roots, resulting in trip hazards and non-compliance.

Unit paving/stonework: select materials that do not lend themselves to being used as projectiles. Any paving in accessible areas must be large format and with minimal surface variation. Avoid tri-hex paving and similar products with gaps which are unsuitable for access by the elderly or people with mobility aids.

Provide concrete or steel edging between garden beds and turf.



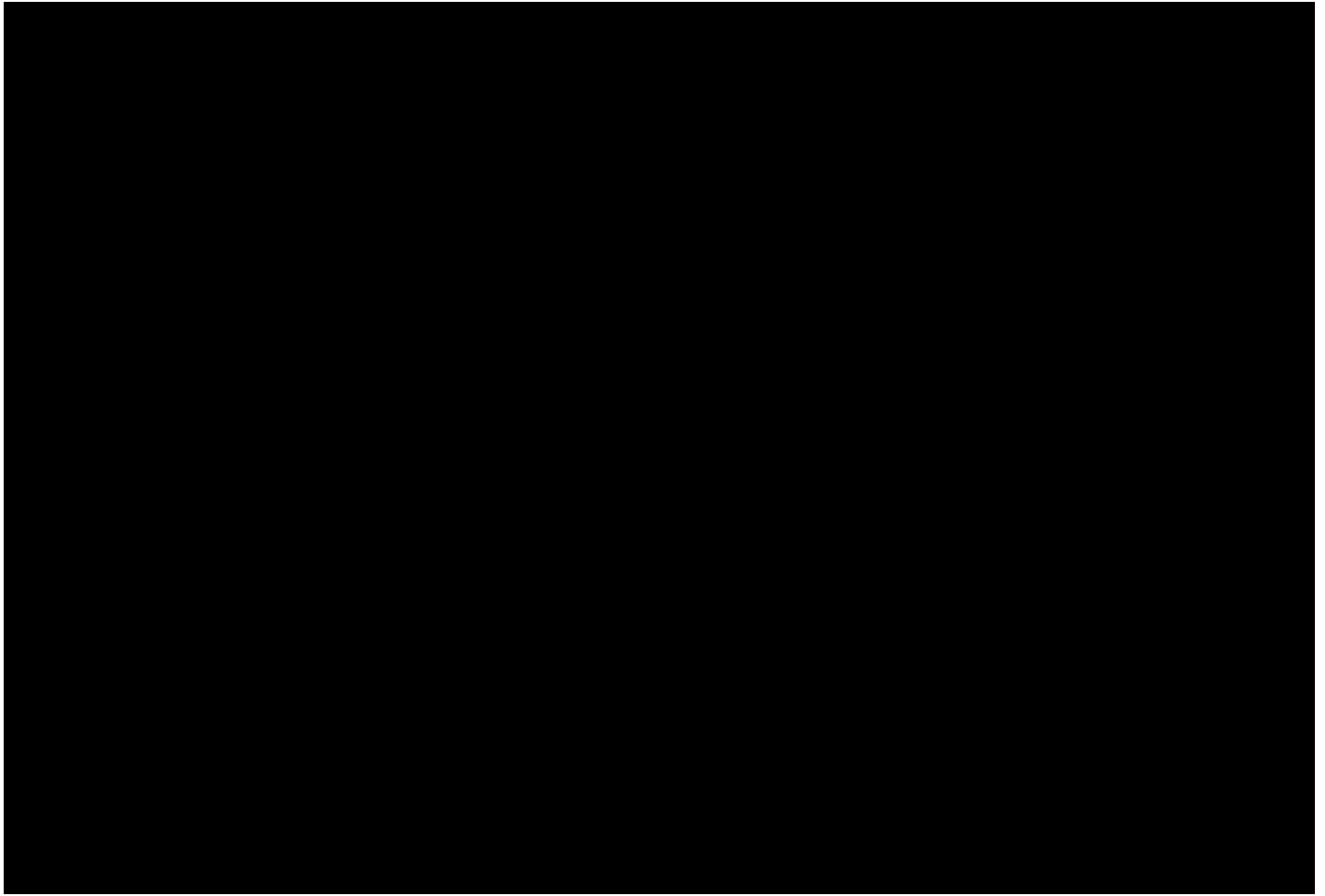
Where retaining walls are suitably located for seating, for example, adjacent communal open space, include arm and backrests where required by AS1428.

nsw.gov.au/homes-nsw



Attachment 6 – Landowner Capital Advance – Drawdown Schedule

Attachment 6 – Landowner Capital Advance – Drawdown Schedule *



Attachment 7 – Not used

Attachment 8 – Not used

Attachment 9 — Guidelines

NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013 - updated September 2017), as amended, supplemented, varied or replaced from time to time.

NSW Government Procurement Policy Framework (August 2021 – updated 25 August 2021) as amended, supplemented, varied or replaced from time to time.

NSW Government Procurement Guideline on Skills and Training in the Construction Industry (as attached to NSW Procurement Board Direction PBD 2020-03 Skills, training and diversity in construction, which is available on the Procure Board website at: <https://arp.nsw.gov.au/pbd-2020-03-skills-training-and-diversity-in-construction/>)

The New South Wales Government Supplier Code of Conduct (<https://buy.nsw.gov.au/policy-library/policies/supplier-code-of-conduct>) as amended, supplemented varied or replaced from time to time.

'Housing Portfolio – Implementing Air Conditioning (AC) & Photovoltaic (PV) In New Homes NSW Dwellings' (May 2024).

Attachment 10 – Financier’s Side Deed



HERBERT SMITH
FREEHILLS
KRAMER

Deed

Financier's Side Deed Project Delivery Deed – Coffs Harbour Social Housing Project

Minister administering the Housing Act 2001 for and
on behalf of the State of New South Wales
(**Landowner**)

MAH Harbour Drive Limited (**Developer**)

[Insert Financier] (**Financier**)

***[Note: This document remains subject to any
changes to the security package agreed
between the Landowner and Housing Australia.]***



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Financier's Side Deed

Project Delivery Deed – Coffs Harbour Social Housing Project

Date ►

Between the parties

Landowner	Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales ABN 36 433 875 185 of 6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150
------------------	--

Developer	MAH Harbour Drive Limited ABN 69 668 668 586 of Level 7, 580 George Street, Sydney NSW 2000
------------------	--

Financier	[Insert Financier] ABN [insert] of [insert]
------------------	---

Recitals	1 The Landowner is the owner of the Property. 2 The Landowner and the Developer have entered into the PDA. Under the PDA, the Landowner has appointed the Developer to develop the Property. 3 The Developer has granted, or proposes to grant, the Financier's Security, including over the PDA. 4 The parties have agreed to certain matters concerning the PDA on the terms of this deed.
-----------------	--

This deed witnesses as follows:



1 Defined terms and interpretation

1.1 Defined terms from PDA

Terms defined in (or incorporated by reference into) the PDA (as defined below) have the same meanings when used in this deed unless otherwise defined in this deed. Parties to the PDA referred to by short form name in this deed are more fully described in the PDA.

1.2 Other defined terms

The meanings of the terms used in this deed are set out below.

Term	Meaning
Authorised Representative	1 a director or company secretary, or; 2 in respect of the Developer, a person it notifies to the Landowner (with a certified copy of that person's specimen signature) to this deed as being its authorised representative for the purposes of this deed where the Landowner has no notice of revocation of that authority; and 3 in respect of the Financier, a person it notifies to the Landowner as being its authorised representative for the purposes of this deed where the Landowner has no notice of revocation of that authority; and 4 in respect of the Landowner, a person it notifies to the Financier as being its authorised representative for the purposes of this deed where the Financier has no notice of revocation of that authority.
[Security trust option] Beneficiary	a beneficiary from time to time under the Security Trust Deed.
Business Day	1 for receiving a Notice in accordance with clause 10, a week day on which banks are open for general banking business in the place of receipt; and 2 for all other purposes, a week day on which banks are open for general banking business in Sydney.
Corporations Act	the <i>Corporations Act 2001</i> (Cth).



Term	Meaning
Enforcement Rights	any of the Financier's rights or powers pursuant to the Financier's Security to: 1 appoint an External Administrator to the Developer or to some or all of the Secured Property; 2 enforce the Financier's Security; 3 take possession as chargee or mortgagee of some or all of the Secured Property; and 4 exercise its Powers consequent on exercise of any of the above rights.
Enforcing Party	the Financier or any External Administrator, agent or attorney appointed under the Financier's Security.
Event of Default	1 has the meaning given in the PDA; and 2 also includes any other termination right of the Landowner under the PDA.
Event of Default Notice	in respect of an Event of Default a written notice from the Landowner to the Financier referring to this deed and stating: 1 which Event of Default has occurred; and 2 the Event of Default Rights (if any) that the Landowner proposes to exercise in respect of the Default and the relevant clauses under the PDA giving rise to those Event Default Rights.
Event of Default Right	any right, power, discretion or remedy of the Landowner (whether under the PDA or otherwise at law or in equity) to: 1 avoid, terminate or rescind, or treat as terminated or repudiated, the PDA; or 2 cease or suspend performance of its obligations under the PDA; or 3 be released from the Landowner's obligations under the PDA.
External Administrator	an administrator, controller or managing controller (each as defined in the Corporations Act), trustee, provisional liquidator, liquidator or any other person (however described) holding or appointed to an analogous office or acting or purporting to act in an analogous capacity.
Facility Agreement	[insert description of facility agreement, including all parties].



Term	Meaning
Finance Document	the Facility Agreement, [the Security Trust Deed,] each Financier's Security and any other document defined as a 'Finance Document' in any of those documents.
Financier's Security	1 the general security deed over the Developer's assets in favour of the Financier; and 2 each other present or future Security Interest granted by the Developer in favour of the Financier which is collateral to a security described in the paragraph above and consented to by the Landowner under clause 2.4.
Government Agency	any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.
GST	has the meaning given in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Insolvency Event	has the meaning given in the PDA.
Loss	a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.
Notice	a notice, demand, consent, approval or communication given in accordance with clause 10.
PDA	the agreement titled 'Project Delivery Deed – Coffs Harbour Social Housing Project' between the Landowner and the Developer dated [insert date] .
Power	any right, power, discretion or remedy of an Enforcing Party under or in connection with a Finance Document or under applicable law. It includes accepting repudiation and granting waivers.
PPSA	the <i>Personal Property Securities Act 2009</i> (Cth).
Property	has the meaning given in the PDA.



Term	Meaning
Remedied or Remedy	1 for a Trigger Event or Event of Default relating to a failure to pay money, the payment of the outstanding amount due and payable to the Landowner; 2 for a Trigger Event or Event of Default relating to a failure to do any other thing that is able to be done, the doing or procuring of the doing of that thing; 3 for a Trigger Event or Event of Default relating to an Insolvency Event in respect of the Developer, the Financier giving a Step-in Notice to the Landowner; 4 in the case of any other Trigger Event or Event of Default: • payment of compensation claimed (or such other amount agreed) by the Landowner for the Trigger Event or Event of Default; or • undertaking or procuring a course of action as detailed to the Financier by the Landowner (or otherwise agreed by the Landowner), to the Landowner's reasonable satisfaction, having regard to the nature of the Trigger Event or Event of Default, the time required to pay the compensation or take the course of action and the resources available to the Developer or Enforcing Party (as the case may be); or 5 in any case, the assignment or novation of the Developer's interest in the PDA under clause 6.3 of this deed to a person who, in the case of a Trigger Event or Event of Default arising other than pursuant to an Insolvency Event, agrees to remedy the Trigger Event or Event of Default in accordance with any of the above paragraphs as applicable. To avoid doubt, paragraph 3 does not limit the Financier's right to appoint a controller (as defined in the Corporations Act) under, or otherwise enforce, the Financier's Security granted by the Developer in respect of whom an Insolvency Event has occurred, but such appointment or enforcement shall not, of itself, Remedy a Trigger Event or Event of Default relating to an Insolvency Event in respect of the Developer.
Remedy Period	1 for a Trigger Event, the period specified in the PDA, or such longer time as is agreed between the Landowner and the Developer under the PDA; and 2 for an Event of Default, the period starting one Business Day after the date the Financier receives a copy of an Event of Default Notice and ending 20 Business Days later, or any longer period, as extended in accordance with clause 5.2.
Secured Property	any property or asset the subject of the Financier's Security, but excludes the Property (except to the extent that the Developer is the registered proprietor of any part of the Property).



Term	Meaning
Security Interest	any: 1 'security interest' as defined in the PPSA; 2 security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and 3 thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset, and includes any agreement to create any of them or to allow them to exist.
[Security trust option] Security Trust Deed	the document titled ["Security Trust Deed"] between the Developer, the Financier and others.
Step-in Notice	a written notice from the Financier to the Landowner stating that an Enforcing Party is stepping-in to the Developer's rights and obligations under the PDA for the purposes of this deed.
Step-in Period	the period from (and including) the date that the Financier gives a Step-in Notice to the Landowner to (but excluding) the earlier of: 1 receipt by the Landowner of a Step-out Notice; 2 the date of Remedy of the relevant Trigger Event or Event of Default; 3 the date on which the PDA terminates or expires; and 4 the date on which the PDA is assigned or novated as contemplated in clause 6.3.
Step-out Notice	a written notice from the Financier to the Landowner stating that an Enforcing Party is stepping-out of the PDA for the purposes of this deed.
Tax	any tax, levy, duty, rate, impost, charge, deduction or withholding (and any related penalty, fine, fee or interest) imposed, levied or assessed by a Government Agency. It includes stamp duty, GST and any transaction taxes and duties.
Trigger Event	has the meaning given under the PDA.



Term	Meaning
Trigger Event Notice	in respect of a Trigger Event, a written notice from the Landowner to the Financier referring to this deed and stating: 1 which Trigger Event has occurred; and 2 the cure period (if any) that the Developer is entitled to in relation to that Trigger Event under the PDA.

1.3 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (f) a document (including this deed) includes any variation or replacement of it;
- (g) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and includes any notice issued by, and any requirements of, a Government Agency;
- (h) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (i) dollars or \$ is a reference to Australian currency;
- (j) a time of day is a reference to Sydney time;
- (k) the word 'person' includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (l) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (m) if a day by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur by the next Business Day;



- (n) a reference to any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
- (o) a word in the singular includes the plural and vice versa;
- (p) the words 'including', 'for example' or 'such as' when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (q) unless the context otherwise requires, defined terms will extend to all parts of speech which are derivative from that term.

1.4 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

1.5 Developer's Employees and Agents

If this deed prohibits the Developer or the Financier from doing a thing, then:

- (a) the Developer or the Financier (whichever is relevant) must do everything necessary to ensure that the Developer's employees and agents do not do that thing; and
- (b) the Developer or the Financier may not authorise or cause any person to do that thing.

1.6 Interrelation with PDA and Finance Documents

- (a) Except as this deed expressly provides otherwise, this deed does not affect a person's rights, obligations, powers or remedies under the PDA or a Finance Document.
- (b) The provisions of this deed prevail:
 - (1) to the extent of any inconsistency with the provisions of the PDA or any Finance Document; and
 - (2) where a party is unable to concurrently satisfy the provisions of this deed and the provisions of the PDA or any Finance Document.
- (c) The failure of the Landowner or the Financier to comply with this deed does not affect the Developer's liability or obligations under the PDA or a Finance Document.

1.7 Benefit of undertakings

Except to the extent an undertaking in this deed is expressed to be given in favour of the Developer, the Developer is not entitled to the benefit of any undertaking in this deed and any such undertaking may be waived without the consent of the Developer.

1.8 [Security trust option] Capacity of Financier

[Security Trustee limitation of liability provision to be included]



1.9 [Security trust option] Replacement of Financier

- (a) **(Assignment or novation)** If the Financier is replaced as trustee under the Security Trust Deed, then the Financier may assign, novate or otherwise transfer its rights and obligations under this deed to the replacement trustee.
- (b) **(Novation deed)** Each party agrees that it will enter into a novation deed with any replacement trustee that is appointed under the Security Trust Deed (in a form reasonably acceptable to the Landowner, the Financier and the replacement trustee).

2 Consent to Financier's Security and undertakings

2.1 Consent and agreement – Landowner

The Landowner consents to the Financier's Security (including being granted over the Developer's interest and rights in the PDA), and agrees that:

- (a) the existence of the Financier's Security, and the exercise of any Power in compliance with this deed, will not of itself constitute or cause an Event of Default, entitle the Landowner to exercise any Event of Default Right nor give the Landowner additional or different rights under the PDA;
- (b) it will not interfere with or act to disrupt any exercise of any Power where that exercise is subject to and in accordance with the terms of this deed;
- (c) entry into this deed satisfies any requirement under the PDA for the Landowner to consent or agree in relation to the Developer's entry into and performance of the Financier's Security;
- (d) nothing in this deed obliges an Enforcing Party to Remedy any Trigger Event or Event of Default, exercise any Power or provide financial accommodation to any person, or to procure any of those things;
- (e) in exercising its Enforcement Rights or Powers:
 - (1) following notice to the Landowner that an Enforcing Party is exercising Powers under the Financier's Security in accordance with clause 3, an Enforcing Party will be entitled to exercise and enforce all or any rights, powers, discretions and remedies, and perform any obligations, of the Developer under or in connection with the PDA, as if it were a party in place of (and to the exclusion of) the Developer, but in doing so will have no greater rights or powers under the PDA than those of the Developer; and
 - (2) subject to clause 6.3, an Enforcing Party may assign or otherwise dispose of the rights and interests of the Developer under the PDA in accordance with the terms of this deed.



2.2 Counterparty may rely

The Landowner may rely on any notice or other enforcement action by an Enforcing Party in accepting any exercise by an Enforcing Party of any of the Developer's rights, powers, discretions or remedies, or performance of an obligation, under the PDA, and need not enquire whether a person purporting to be an Enforcing Party is duly appointed or authorised.

2.3 Property

- (a) The Financier (and any persons on its behalf) has no interest in the Property and must not lodge a caveat on the title to the Property.
- (b) The Landowner and the Developer agree, on reasonable notice and at reasonable times and subject to the Landowner's and the Developer's work health and safety requirements, to permit each Enforcing Party and their respective representatives to enter, access and inspect the Property in connection with the exercise of Powers, performance of obligations or effecting a Remedy in accordance with this deed, and to give reasonable assistance to them to do so.
- (c) If an Enforcing Party or its representative accesses the Property other than while the Financier's Security is enforceable, the Financier agrees to notify the Developer of the access so that a representative of the Developer may also attend.

2.4 Changes to Financier's Security

- (a) The Financier and the Developer undertake and agree not to:
 - (1) make any material amendment to, waive, vary or change any term or provision of the Financier's Security; or
 - (2) enter into, create or allow to subsist any additional Financier's Security,without the prior written consent of the Landowner (in its absolute discretion).
- (b) The Developer agrees to promptly give to the Landowner a copy of each amended or additional Financier's Security once executed, certified by an authorised officer of the Developer to be a true copy.

2.5 Meetings and procedures

The Landowner and the Developer agree that if the Landowner has been notified that an Enforcing Party is taking enforcement action under the Financier's Security or a Step-in Period subsists, a representative of each Enforcing Party may attend and participate in each:

- (a) dispute resolution procedure contemplated by the PDA; and
- (b) other meeting in relation to meetings of the PCG (as defined in the PDA) that the Developer is entitled to attend.

The Developer agrees to provide the Financier with reasonable written notice of any such proposed meeting.



3 Notice and enforcement by Financier

- (a) The Financier must:
 - (1) notify the Landowner of the identity of any Enforcing Party prior to the appointment of that Enforcing Party; and
 - (2) if requested by the Landowner, promptly provide verification of the role of the Enforcing Party and their relationship to the Financier.
- (b) The Financier agrees to promptly notify the Landowner if an event of default (however described) occurs under the Finance Documents, and the steps and actions being taken by the Developer to remedy any such event of default.
- (c) If an event of default (however described) occurs or is anticipated to occur under the Finance Documents, the Financier may not seek to exercise any Enforcement Rights or Powers under those documents, insofar as it affects the PDA, a Transaction Document or the Property, without first giving three days' (or such shorter period agreed by the Landowner in its absolute discretion) written notice to the Landowner.

4 Default

4.1 Trigger Event Notice

The Landowner agrees to use reasonable endeavours to give to the Financier a copy of any Trigger Event Notice at the same time as the relevant notice is given to the Developer. The Financier acknowledges that if the Landowner omits to give this notice, the Landowner will not be liable in damages to the Financier or any other person.

4.2 Default Notice

The Landowner agrees to use reasonable endeavours to give to the Financier a copy of any Event of Default Notice at the same time as the relevant notice is given to the Developer. The Financier acknowledges that if the Landowner omits to give this notice, the Landowner will not be liable in damages to the Financier or any other person.

4.3 Exercise of Default Rights

- (a) Except as set out in clause 4.3(c), the Landowner may only exercise any Event of Default Right that it has in relation to an Event of Default if:
 - (1) it has given an Event of Default Notice to the Developer and given a copy to the Financier in accordance with clause 4.2;
 - (2) the relevant Event of Default has not been Remedied within the relevant Remedy Period and subsists;
 - (3) no Step-in Period subsists; and



- (4) the Financier has not requested an assignment or novation of the Developer's rights and obligations under the PDA (or has requested an assignment or novation and such assignment or novation has been refused by the Landowner) in accordance with clause 6.3 where, in the case of an Event of Default arising other than pursuant to an Insolvency Event, the terms of such assignment or novation require the Remedy of the Event of Default.
- (b) Clause 4.3(a) applies despite any provision of the PDA or any other document, and regardless of whether a Step-in Period subsists or an Enforcing Party has taken any action to exercise or enforce Powers pursuant to the Financier's Security.
- (c) Clause 4.3(a) does not prohibit the Landowner from exercising an Event of Default Right arising under the PDA (after allowing for any grace, remedy or cure period that would have been available to the Developer) for an Event of Default:
 - (1) that has not been Remedied and subsists at the end of the relevant Remedy Period, and in respect of which it has given an Event of Default Notice to the Developer and given a copy to the Financier in accordance with clause 4.2; or
 - (2) caused by an act or omission of an Enforcing Party:
 - (A) during a Step-in Period; or
 - (B) while an External Administrator is appointed to the Developer pursuant to the Financier's Enforcement Rights.
- (d) Notwithstanding any other provision of this deed, the Landowner is not restricted from exercising a termination right arising under clause 13.4 of the PDA.

5 Remedy

5.1 Right to Remedy

An Enforcing Party may, but is not obliged to, take steps to prevent, Remedy or procure the Remedy of a Trigger Event or Event of Default within the relevant Remedy Period.

5.2 Extension of Remedy Period

If the Financier requests, the Landowner agrees not to unreasonably withhold its agreement to extend a Remedy Period where the Landowner determines (in its absolute discretion) that:

- (a) an Enforcing Party is diligently pursuing Remedy of the relevant Trigger Event or Event of Default;
- (b) the proposed period of extension is reasonable in the context of the Project; and
- (c) the Landowner is satisfied that there are reasonable prospects of Remedying the relevant Trigger Event or Event of Default within the proposed extended Remedy Period.



5.3 During Remedy Period or until remedy

If a Trigger Event or Event of Default occurs then, until the relevant Remedy Period expires or the relevant Trigger Event or Event of Default is Remedied (whichever occurs first), the Landowner must continue to observe and perform all of its obligations under the PDA as if that Trigger Event or Event of Default had not occurred.

5.4 Effect of Remedy

If a Trigger Event or Event of Default is Remedied, that Trigger Event or Event of Default will be taken to be remedied for all purposes as between the Landowner and the Developer (notwithstanding that the time required under the PDA for doing any thing may have passed) as if that Trigger Event or Event of Default had not occurred.

6 Step-in, Step-out and novation

6.1 Step-in Notice and Step-out Notice

- (a) At any time after a Trigger Event Notice or Event of Default Notice is issued or the Financier's Security is enforceable, the Financier may give the Landowner a Step-in Notice.
- (b) At any time after a Step-in Period has commenced, the Financier may give the Landowner a Step-out Notice, and on and from the date of the Step-out Notice, the Financier (or an Enforcing Party) will not be liable for any act, matter or thing under or in connection with the PDA, and the Landowner releases the Financier (or an Enforcement Party) from any claim or liability in respect of such matters.
- (c) More than one Step-in Notice and Step-out Notice may be given.
- (d) The Financier agrees to promptly give a copy of each Step-in Notice and Step-out Notice to the Developer, however the Financier's failure to give a copy of the notice in no way:
 - (1) affects or prejudices any Power or the effect or validity of a Step-in Notice or a Step-out Notice for the purposes of this deed; or
 - (2) gives the Landowner, the Developer or any other person any rights or claim against any Enforcing Party.

6.2 During Step-in Period

- (a) The Financier will (or if an External Administrator is appointed under the Financier's Security, will cause the External Administrator to) be liable to:
 - (1) Remedy any outstanding Trigger Event or Event of Default of which the Landowner has given written notice to the Developer prior to the issuance of a Step-in Notice;
 - (2) perform all of the Developer's obligations under the PDA which are required to be performed during a Step-in Period; and
 - (3) the Landowner for (and indemnifies the Landowner against) all claims and any costs or expenses for which the Landowner may become liable arising from Loss to the Property, resulting directly or indirectly



from the Financier or an Enforcing Party exercising their Powers or Enforcement Rights during a Step-in Period.

Other than as specified above, and except where the Enforcing Party becomes liable as a novatee following a novation under clause 6.3, no Enforcing Party will be responsible or liable (whether or not pursuant to this deed) for any obligation or liability of the Developer to the Landowner which accrued, or is required under the PDA to be performed, outside of a Step-in Period.

- (b) During a Step-in Period, the Landowner acknowledges and agrees that the PDA will remain in full force and effect, and undertakes to duly and punctually perform all of its obligations under the PDA as if the Enforcing Party was a party to the PDA in the place of the Developer.
- (c) The Developer acknowledges that the Landowner may rely on any Step-in Notice in accepting any exercise by an Enforcing Party of any of the Developer's rights or powers under the PDA.

6.3 Assignment or novation of PDA

- (a) At any time during which the Financier's Security is enforceable and before termination of the PDA, the Landowner, promptly following a request from the Financier, undertakes to:
 - (1) do everything in its power to effect an assignment and novation of the Developer's rights, duties and obligations under the PDA and each other Transaction Document to which the Landowner is a party in favour of any person nominated by the Financier who in the Landowner's opinion (at the Landowner's absolute discretion) is solvent, respectable, responsible, will not cause any reputational harm to the Landowner and who has the necessary financial and other resources to assume the Developer's rights, duties and obligations under the PDA (**Novatee**), by entering into a deed with the Developer, the Financier (and/or an Enforcing Party) and the Novatee in form and substance satisfactory to the Landowner (acting reasonably); or
 - (2) consent to any change of Control of, or change to the Parent of, any party comprising the Developer resulting from the Financier selling the shares or units in the Developer pursuant to the Financier's Security, if following that change, the Landowner (in its absolute discretion) is satisfied that the Developer will have the necessary financial and other resources to assume the Developer's rights, duties and obligations under the PDA.
- (b) The Landowner must give the Financier and the Novatee all reasonable assistance (including entering into documents) to effect any assignment and novation contemplated in this clause 6.3 and agrees that following any such assignment and novation, any references to the Developer in documents between the Landowner and the Developer will be deemed to be references to the Novatee.

6.4 Assignment or novation of Building Contract

- (a) The Financier confirms that it has received a copy of (and approves the terms of) the Builder's Side Deed prior to execution of this deed, and acknowledges the rights of the Landowner to require a replacement of the Building Contract or a novation and assignment of the Developer's rights and obligations under the



Building Contract in accordance with the terms of the Builder's Side Deed (**Developer Novation**).

- (b) If the Landowner is entitled to require a Developer Novation, the Financier agrees to (and will do all things necessary or required by the Landowner to) unconditionally release all of the Financier's Security (at no cost, and notwithstanding any outstanding moneys owed by the Developer to the Financier) over the Developer's rights, title and interest under or in connection with the Building Contract.
- (c) The Financier must give the Landowner and the Novatee or substitute Developer of the Developer Novation all reasonable assistance (including entering into documents) to effect any assignment and novation contemplated in this clause 6.4.
- (d) This clause survives termination of this deed.

7 Responsibilities

7.1 Developer responsibilities

- (a) Any action under the PDA pursuant to an Enforcing Party's exercise of Powers will be deemed an action of the Developer.
- (b) The Developer will continue to be responsible to the Landowner for its obligations and liabilities under the PDA notwithstanding:
 - (1) the creation or existence of the Financier's Security or exercise of Powers;
 - (2) any assumption of liability by an Enforcing Party to the Landowner under this deed; or
 - (3) the exercise by an Enforcing Party of any rights or powers of the Developer under the PDA.
- (c) The Developer indemnifies each Enforcing Party against, and must pay to the relevant Enforcing Party on demand amounts equal to, all Losses of the Enforcing Party arising out of or in connection with the PDA.

7.2 Landowner

Each party acknowledges and agrees that despite any provision of this deed or the PDA:

- (a) The Landowner is not responsible for, and does not provide any guarantee of, any of the Developer's obligations under this deed, the Finance Documents or the PDA to any party; and
- (b) nothing in this deed or the PDA obliges the Landowner to exercise any rights under this deed, and the Landowner is not liable to any party if the Landowner does not:
 - (1) exercise any rights; or
 - (2) otherwise take any steps or action that the Landowner is not specifically obliged to take, under or related to this deed.



8 Representations and warranties

8.1 By Developer

The Developer represents and warrants to the Financier and the Landowner that:

- (a) **(existence)** it is properly registered and incorporated as a company limited by guarantee and validly exists in its place of incorporation;
- (b) **(no violation)** its execution, delivery and performance of this deed does not violate any statute or law, judgment, ruling, order, its constitution or any document or agreement which is binding on it;
- (c) **(power)** it has the power, right and necessary corporate authority to enter into and exercise its rights and perform its obligations under this deed;
- (d) **(binding and enforceable)** this deed and the PDA are (subject to equitable principles affecting creditor's rights generally) valid, binding and enforceable against it in accordance with the terms of this deed and the PDA, and the transactions contemplated by this deed and the PDA are entered into in its best interests and for its benefit;
- (e) **(authorisations)** all consents, licences, approvals and authorisations of every Government Agency required to be obtained by it in connection with the execution, delivery and performance of this deed and the PDA have been obtained and are valid and subsisting;
- (f) **(PDA)** the PDA (including the documents referred to in it) evidences all terms of the agreement between them regarding the subject matter of the PDA;
- (g) **(other representations)** its representations and warranties in the PDA are true and not misleading;
- (h) **(litigation)** no litigation or administrative, arbitration or other proceeding or action (including any action by a Government Agency) is current or pending or, to its knowledge, is likely or threatened which, if adversely determined, would have or be likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this deed and the PDA;
- (i) **(solvency)** it is solvent and there are reasonable grounds to expect that it will continue to be able to pay its debts as and when they are due;
- (j) **(own enquiries)** it has relied on its own investigations and enquiries regarding the transactions contemplated by this deed and the PDA and has not relied on any information, advice or opinion given or offered by or on behalf of an Enforcing Party even if in answer to any enquiry by or for it; and
- (k) **(no Event of Default)** so far as it is aware, no Event of Default subsists.

8.2 Reliance and survival

The Developer acknowledges that:

- (a) the Financier and the Landowner have entered into this deed and, in the case of the Financier, the Financier's Security in reliance on their respective representations and warranties in this clause 8; and
- (b) those representations and warranties survive execution and delivery of this deed.



9 Costs, expenses and Taxes

9.1 Costs and expenses of Enforcing Party

The Developer must pay or reimburse on demand all Costs and expenses (which, in the case of paragraphs (a), (b) and (c) below, are reasonable Costs and expenses) of the Landowner and an Enforcing Party (and of its officers, employees and agents), and indemnifies the Landowner and each Enforcing Party on demand for any Loss arising, in connection with:

- (a) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on, this deed;
- (b) a variation, release or discharge of this deed;
- (c) giving a consent or approval or waiving a requirement in connection with this deed;
- (d) exercising, enforcing or protecting a Power, or attempting to do so;
- (e) an Event of Default, or the Remedy or attempted remedy of an Event of Default;
- (f) an assignment or novation of the PDA (or the Developer's rights and obligations under the PDA); or
- (g) obtaining or procuring performance or satisfaction of the Developer's or the Landowner's obligations under this deed.

These Costs and expenses include any legal costs and expenses (on a full indemnity basis) and any professional consultant's fees.

9.2 Taxes, fees and charges

The Developer must pay all:

- (a) Taxes, fees and charges in connection with this deed or any payment, receipt, supply or other transaction carried out pursuant to, or contemplated by, this deed, including Taxes passed onto the Financier by another financial institution or supplier of goods and services; and
- (b) fines and penalties for late payment or non-payment of those amounts, except where the Developer places the Financier in cleared funds to make the payment not less than 5 Business Days before the due date and the Financier fails to make the payment.

The Developer must pay or reimburse the Financier on demand for all such amounts which are payable or which the Financier determines in good faith to be payable.

9.3 GST

- (a) In this clause 9.3:
 - (1) except where the context suggests otherwise, terms used in this clause 9.3 have the meanings given to those terms by the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended from time to time).



- (2) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 9.3.
 - (3) unless otherwise expressly stated, all consideration to be provided under any other provision of this contract is exclusive of GST.
 - (4) a reference to GST payable or input tax credit entitlements includes GST and input tax credits to which an entity is notionally liable or entitled in accordance with Division 177 of the GST Act; and
 - (5) a reference to GST or input tax credits to which an entity is liable or entitled includes any GST and input tax credits to which the representative member of any GST group of which that entity may belong is liable or entitled.
- (b) Any payment or reimbursement required to be made under this deed that is calculated by reference to a Loss, cost or expense incurred by a party shall be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which the Loss, cost or expense relates.
- (c) If GST is payable on any supply made by the Landowner under or in connection with this deed (not being a supply the consideration for which is specifically described in this deed as 'GST inclusive'), the recipient of the supply must pay to the Landowner an additional amount equal to the GST payable on the supply (**GST Amount**).
- (d) The recipient need not pay a GST Amount until the Landowner has given the recipient a tax invoice for the supply to which the payment relates.

10 Notices and demands

10.1 Form

Unless expressly stated otherwise in this deed, all Notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by an Authorised Representative of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified.

Landowner

Name: Minister administering the Housing Act 201 for and on behalf of the State of New South Wales

Address: 6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150

Email: **[insert]**

For the attention of: **[insert]**

Developer

Name: MAH Harbour Drive Limited

Address: Level 7, 580 George Street, Sydney NSW 2000

Email: 



For the attention of: General Manager/Company Secretary

Financier

Name: [insert]

Address: [insert]

Email: [insert]

For the attention of: [insert]

10.2 Delivery

- (a) They must be:
 - (1) for an Event of Default Notice, a Step-in Notice or a Step-out Notice:
 - (A) left at the address referred to in clause 10.1;
 - (B) sent by prepaid post (airmail, if appropriate) to the address referred to in clause 10.1; or
 - (2) for all other Notices, sent by email to the email address in clause 10.1.
- (b) However, if the intended recipient has notified a changed postal address or changed email address, then the communication must be to that postal address or email address.

10.3 When effective

They take effect from the time they are received unless a later time is specified in them.

10.4 Receipt - postal

If sent by post, they are taken to be received 3 Business Days after posting (or 7 Business Days after posting if sent to or from a place outside Australia).

10.5 Receipt - email

If sent by email, they are taken to be received immediately once sent, unless a notification of delivery failure is received within 15 minutes of the email being sent.

10.6 Receipt - general

If Notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

10.7 Validity

Notices are validly given by the Landowner even if returned unclaimed or if the recipient has been wound up or is absent from the place the Notice is delivered or sent to.

10.8 Waiver of notice period

The Landowner may waive a period of notice required to be given by the Developer under this deed.



10.9 Other methods

This clause does not limit any provision for giving notices in the Financier's Security or the PDA.

11 Assignment

11.1 By Financier

- (a) **[Security trust option]** [Other than in accordance with clause 1.9, t/T]he Financier may not assign its rights under this deed, the Financier's Security or the other Finance Documents, or transfer or dispose of any interest in the Financier's Security or the other Finance Documents, without the consent of the Landowner.
- (b) Subject to the Finance Documents and without limiting clause 13.15(a), the Financier may disclose to a potential assignee or as required by law, the rules of an applicable stock exchange or any applicable regulatory authority any confidential information of the Developer or the Landowner for the purposes of the assignment. The Financier may not otherwise disclose any confidential information of the Landowner without the Landowner's prior written consent or in accordance with clause 13.15.

11.2 By the Landowner

The Landowner may assign, transfer or otherwise deal with its rights, interests or obligations under this deed in accordance with the PDA to an assignee or transferee under the PDA.

11.3 By Developer

The Developer may not assign, transfer or otherwise deal with its rights, interests or obligations under this deed without the Landowner's and the Financier's prior written consent.

12 Termination of this deed

With effect on and from the date on which the Financier has given a full discharge and release of all the Financier's Security, each party agrees that except in respect of:

- (a) any thing that survives termination as provided in this deed; and
- (b) any liability, right or obligation of any party under this deed in relation to any matter arising before the time of termination,

this deed will automatically terminate, any power of attorney granted under this deed is revoked and no party will have any further rights or obligations under or in connection with this deed.



13 General provisions

13.1 Developer acknowledgment

The Developer acknowledges that:

- (a) its obligations under or in relation to the Financier's Security are not in any way affected by this deed (other than as expressly provided in this deed) or by any failure by the Financier or the Landowner to comply with this deed; and
- (b) this deed is for the benefit of the Financier and the Landowner, and not for the benefit of the Developer.

13.2 Equitable relief

Each party:

- (a) acknowledges that damages may not be an adequate remedy for any breach of, or failure by it to comply with, this deed; and
- (b) agrees that, without limiting any other right, remedy or action it has in connection with any actual or threatened breach of, or failure to comply with, this deed by another party, it is entitled to seek equitable relief (including specific performance or injunction or declaratory relief) to restrain any actual or threatened breach of, or failure to comply with, this deed by another party and the other party must not oppose the granting of such relief on the basis that the party seeking such relief has not or will not sustain any actual Loss or damage.

13.3 Exercise of rights

Any party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

13.4 Partial exercise of rights

A single or partial exercise of a right, power or remedy by the Landowner does not prevent a further exercise of that or an exercise of any other right, power or remedy.

13.5 Delay in exercising rights

Failure by any party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

13.6 Landowner not liable

Except to the extent expressly provided for in this deed, the Landowner is not liable for any Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, power or remedy.

13.7 Waiver and variation

A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.



13.8 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Developer in connection with this deed with the result that the Landowner's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

13.9 Approvals and consent

The Landowner may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

13.10 Remedies cumulative

The rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this deed.

13.11 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the Landowner, the Developer or the Financier and survives expiry or termination of this deed. Except as otherwise provided for in this deed, it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this deed.

13.12 Further assurances

If asked by another party (acting reasonably), then a party must, at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind it and its successors under this deed; and
- (b) use its reasonable endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this deed.

13.13 Continuing breaches

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

13.14 Antecedent obligations

The expiry or termination of this deed does not affect the Developer's or the Financier's obligations:

- (a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to the Landowner to enable it to calculate those payments.



13.15 Confidentiality

- (a) All information provided under or in relation to the Transaction Documents:
 - (1) by the Developer to the Landowner; or
 - (2) by the Landowner to the Developer or the Financier,and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person, except:
 - (A) with the consent of the disclosing party;
 - (B) if allowed or required by Law, required by any stock exchange or regulatory authority;
 - (C) in connection with legal proceedings relating to the Transaction Documents or the Works;
 - (D) if the information is generally and publicly available; or
 - (E) to any Enforcing Party, employees, legal advisers, auditors and other consultants to whom it needs to be disclosed.
- (b) The recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and not disclosed it to any person.

13.16 Severability

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction:
 - (1) it is severed for that jurisdiction; and
 - (2) the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (b) This clause 13.16 has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

13.17 Entire agreement

This deed represents the entire agreement between the parties.

13.18 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

13.19 Effect of moratorium

To the extent permitted by Law, the application to this deed of any moratorium or other Act whether State or Federal, having the effect of extending the term or otherwise affecting the operation of the terms of this deed, is expressly excluded and negated.

13.20 Governing Law, jurisdiction and service of process

This deed is governed by the Law in force in New South Wales.



13.21 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

13.22 Waiver

Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

13.23 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument. Subject to applicable law, a counterpart may be signed electronically and may be in hard copy or electronic form.

13.24 Stamp duty

As between the parties, the Developer must bear and is responsible for all stamp duty on or in respect of:

- (a) this deed;
- (b) the sale, purchase, assignment, novation or transfer or any property contemplated by this deed; and
- (c) any instrument or transaction contemplated by this deed.



Signing page

Executed as a deed

Landowner

Signed, sealed and delivered by the **Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales** by its duly authorised delegate, and I hereby certify that I have no notice of revocation of such delegation, in the presence of:

Signature of witness

Name of witness (print)

Signature of delegate

Name of delegate (print)

Office held

Developer

Executed by MAH Harbour Drive Limited in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

[Note: Signing block for financier to be inserted.]

Attachment 11 – Licences

Initial Investigations and Early Works Licence

Construction Licence

1 Initial Investigations and Early Works Licence

1.1 Interpretation

- (a) The terms and conditions of each Initial Investigations and Early Works Licence granted pursuant to clause 30.2 of the Project Delivery Deed are set out in this clause 1 of this Attachment 11.
- (b) Unless otherwise specified, clause references in this clause 1 of this Attachment 11 refer to clauses in clause 1 of this Attachment 11.

1.2 Early Works Licence term

The Early Works Licence:

- (a) commences on the date of this deed; and
- (b) ends on the earlier of:
 - (1) 11.59 pm on the day before the commencement of the Construction Works Licence; and
 - (2) the date of rescission or termination of this deed,

(Initial Investigations and Early Works Licence term).

1.3 Licensed Area

- (a) The licensed area under the Initial Investigations and Early Works Licence is the whole of the Property unless otherwise agreed between the Landowner and the Developer. The licensed area for the purpose of this clause 1 for the Early Works is the **Early Works Area**.
- (b) During the Initial Investigations and Early Works Licence Term, the Developer may use the Property (including the Early Works Area) for the purposes described in clause 1.4.

1.4 Use of the Property

During the Initial Investigations and Early Works Licence Term, the Developer must not:

- (a) when accessing the Early Works Area, except to the extent expressly permitted by the Initial Investigations and Early Works Licence in this clause 1, use the Early Works Area for any purpose other than the Early Works, unless otherwise approved by the Landowner;
- (b) use the Property (other than the Early Works Area) for any purpose other than the Initial Investigations, the Site Investigations and any other act, matter or thing required to satisfy the Developer Preliminary Period Conditions
- (c) do anything in or about the Property (including the Early Works Area) which may constitute a breach of the Developer's obligations under the Guidelines;
- (d) cause a Claim to be made under a public liability insurance policy affecting the Property (including the Early Works Area); and/or



- (e) access the Property (including the Early Works Area) without first complying with the Developer's obligations under clause 20 of the Project Delivery Deed with respect to timing, site induction and work health and safety,

but the Developer may:

- (f) authorise the Developer's Associates, including the Builder to access the Early Works Area; and
 - (g) enter into sub-licences of the Early Works Area,
- for the Early Works.

1.5 Developer obligations

(a) No proprietary interest

The Developer acknowledges and agrees that for the term of the Early Works Licence:

- (1) the Developer does not have exclusive possession or occupation of the Property (including the Early Works Area); and
- (2) the Developer is not a tenant of the Landowner.

(b) Care of Property

From the date of commencement of the Initial Investigations and Early Works Licence to the expiry of Initial Investigations and Early Works Licence term (on the date determined in accordance with clause 1.2(b), the Developer:

- (1) is solely responsible for, and takes all risk relating to security and the safety of people and property on the Early Works Area;
- (2) is responsible for fencing the Early Works Area;
- (3) takes responsibility for and ownership of existing fencing/hoarding located on the Early Works Area as at the commencement of the Early Works Licence including repair, maintenance and removal (if required);
- (4) must not make any structural additions to the Property (including the Early Works Area) other than as approved by the Landowner in accordance with the Initial Investigations and Early Works Licence or the Transaction Documents;
- (5) must, at all times during the Initial Investigations and Early Works Licence:
 - (A) establish, maintain and comply with appropriate emergency safety and security;
 - (B) do all things prudent and necessary to protect people and property;
 - (C) prevent nuisance and unreasonable noise and disturbance;
 - (D) use all reasonable endeavours to protect the Property and maintain the security of the perimeter of the Property; and
 - (E) protect the Property and maintain security of the Early Works Area and the perimeter of the Early Works Area,

in accordance with clause 20 of the Project Delivery Deed.



1.6 Landowner Obligations

The Landowner must not, without the Developer's prior consent (which may not be unreasonably withheld):

- (a) do anything on or to the Property (including the Early Works Area); or
- (b) grant access to the Property (including the Early Works Area) to any person other than the Developer and the Developer's Associates,

1.7 Expiry

- (a) If this deed is terminated prior to the commencement of the Early Works, then following expiry of the Initial Investigations and Early Works Licence term (on the date that the deed is terminated), the Developer must:
 - (1) make good in a timely manner any damage to the Early Works Area); and
 - (2) unless otherwise agreed with the Landowner, return the Early Works Area to the Landowner in the same condition as it was on the commencement date of the Initial Investigations and Early Works Licence,to the extent that any damage or other adverse change to the condition of the Early Works Area was caused by the Developer or the Developer's Associates accessing the Early Works Area pursuant to the Initial Investigations and Early Works Licence and was not works which comprised the Early Works.
- (b) If this deed is terminated prior to the completion of the Demolition Works which comprises Early Works, then following the expiry of the Initial Investigations and Early Works Licence term (on the date that the deed is terminated), the Developer must at the Landowner's direction, complete the Demolition Works provided that the provisions of this deed under which the Landowner is required to pay for the Demolition Works and the Developer is entitled to be paid for the Demolition Works, survive and do not merge on expiry or termination of this deed.

1.8 Indemnity and insurance

The provisions of clauses 30.5, 30.6, 30.7, 30.8, 30.9 and 30.10 of the Project Delivery Deed are taken to be part of this licence with the following modifications:

- (a) references to "Property" in those clauses are to be read as a reference to that part of the Property the subject of this Initial Investigations and Early Works Licence; and
- (b) references to "Works" in those clauses are to be read as references to the "Initial Investigations and Early Works" the subject of this Initial Investigations and Early Works Licence.

1.9 Provisions of Project Delivery Deed

The parties acknowledge and agree that nothing in this Initial Investigations and Early Works Licence limits or otherwise affects the operation of the Project Delivery Deed. However, to the extent of any inconsistency between the provisions of the Project Delivery Deed and this Initial Investigations and Early Works Licence, the provisions of this Initial Investigations and Early Works Licence will prevail.

2 Construction Works Licence

2.1 Interpretation

- (a) The terms and conditions of each Construction Works Licence granted pursuant to clause 30.3 of the Project Delivery Deed are set out in this Attachment 11.
- (b) Unless otherwise specified, clause references in this clause 2 in this Attachment 11 refer to clauses in clause 2 of this Attachment 11.

2.2 Licence term

Each Construction Works Licence:

- (a) commences on the date on which the last of the Preliminary Period Conditions is satisfied or waived in accordance with this deed; and
- (b) ends on the earlier of:
 - (1) in respect of:
 - (A) the part of the part of the Property the subject of the CHP Management Agreement – the date of commencement of the CHP Management Agreement; or
 - (B) the part of the Property being transferred pursuant to the Proposed Contract, the date of completion of the Proposed Contract; and
 - (2) the date of rescission or termination of this deed.

2.3 Licensed area

The licensed area for each Construction Works Licence is that part of the Property the subject of the Works. The licensed area for the purpose of this clause 2 is the **Works Area**.

2.4 Use of the Property

The Developer:

- (a) must not:
 - (1) use the Works Area for any purpose other than to carry out the Works, unless otherwise approved by the Landowner;
 - (2) do anything in or about the Works Area which may constitute a breach of the Developer's obligations under the Guidelines; or
 - (3) access any part of the Property other than the Works Area;
- (b) may:
 - (1) authorise the Developer's Associates, including the Builder to access the Works Area; and
 - (2) enter into sub-licences of the Works Area, for the Works.

2.5 Developer obligations

(a) No proprietary interest

The Developer acknowledges and agrees that for the term of the Construction Works Licence:

- (1) the Developer does not have exclusive possession or occupation of the Property; and
- (2) the Developer is not a tenant of the Landowner.

(b) Care of Property

From the commencement of the Construction Works Licence, the Developer:

- (1) is solely responsible for, and takes all risk relating to security and the safety of people and property on the Works Area;
- (2) is responsible for fencing the Works Area;
- (3) must not make any structural additions to the Works Area other than in accordance with the Transaction Documents;
- (4) must, at all times during the term of a Construction Works Licence:
 - (A) establish, maintain and comply with appropriate emergency safety and security;
 - (B) do all things prudent and necessary to protect people and property;
 - (C) prevent nuisance and unreasonable noise and disturbance; and
 - (D) protect the Property and maintain security of the Works Area the perimeter of the Works Area,
 in accordance with clause 20 of the Project Delivery Deed; and
- (5) must repair and maintain any improvements on the Works Area (other than that part of the Development that has reached Practical Completion) in good repair and condition, and keep them clean and tidy and free of pest and vermin.

2.6 Landowner Obligations

The Landowner must not, without the Developer's prior consent (which may not be unreasonably withheld):

- (a) do anything on or to the Works Area; or
- (b) grant access to the Works Area to any person other than the Developer and the Developer's Associates.

2.7 Indemnity and insurance

The provisions of clauses 30.5, 30.6, 30.7, 30.8, 30.9 and 30.10 of the Project Delivery Deed are taken to be part of this licence with the following modifications:

- (a) references to "Property" in those clauses are to be read as a reference to that part of the Property the subject of this Construction Licence; and
- (b) references to "Works" in those clauses are to be read as references to the "Works" the subject of this Construction Licence.

2.8 Provisions of Project Delivery Deed

The parties acknowledge and agree that nothing in this Construction Works Licence limits or otherwise affects the operation of the Project Delivery Deed. However, to the extent of any inconsistency between the provisions of the Project Delivery Deed and this Construction Works Licence, the provisions of this Construction Works Licence Construction Works will prevail.

Attachment 12 – Builder’s Side Deed

Builder Side Deed

Coffs Harbour Social Housing Project

Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales (**Landowner**)

MAH Harbour Drive Limited (**Developer**)

[insert] (**Builder**)

Builder side deed

Coffs Harbour Social Housing Project

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Details

Date

Parties

Name	Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales
ABN	36 433 875 185
Short form name	Landowner
Notice details	6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150 Email: [insert] Attention: [insert]

Name	MAH Harbour Drive Limited
ABN	69 668 668 586
Short form name	Developer
Notice details	Level 7, 580 George Street, Sydney NSW 2000

Name	[insert]
ABN	[insert]
Short form name	Builder
Notice details	[insert] Email: [insert] Attention: [insert]

Background

- A The Landowner is the owner of the Land.
- A The Landowner and the Developer have entered into the PDD.
- B Under the PDD, the Landowner has appointed the Developer to develop the Land.
- C The Builder and the Developer have entered or propose to enter into the Building Contract to undertake the Works.
- D The parties have agreed to certain matters concerning the Building Contract and the Works on the terms of this deed.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms from PDD

Terms defined in (or incorporated by reference into) the PDD (as defined below) have the same meanings when used in this deed unless otherwise defined in this deed. Parties to the PDD referred to by short form name in this deed are more fully described in the PDD.

1.2 Other Defined terms

The meaning of the terms used in this deed are set out below:

Authorised Representative means a director or company secretary, or:

- (a) in respect of the Developer, a person it notifies to the Landowner (with a certified copy of that person's specimen signature) as being its authorised representative for the purposes of the Security Interest where the Landowner has no notice of revocation of that authority; and
- (b) in respect of the Builder, a person it notifies to the Landowner as being its authorised representative for the purposes of this deed where the Landowner has no notice of revocation of that authority; and
- (c) in respect of the Landowner, a person it notifies to the Builder as being its authorised representative for the purposes of this deed where the Builder has no notice of revocation of that authority.

Building Contract means a head contract between the Developer and a Builder in connection with the design and construction (or construction only) of all or substantially all of the Works and complying with the *Home Building Act 1989 (NSW)*.

Business Day means:

- (a) for receiving a Notice in accordance with clause 12, a week day on which banks are open for general banking business in the place of receipt; and
- (b) for all other purposes, a week day on which banks are open for general banking business in Sydney NSW.

Certified Costs means amounts certified by the Superintendent under the Building Contract as being properly incurred and payable to the Builder for Works under the Building Contract.

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

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

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

Default means the occurrence of:

- (a) an Insolvency Event in respect of the Developer; or
- (b) any breach by the Developer of, or event of default or termination event (however called) by or in respect of the Developer under, the Building Contract or any other event or circumstance, which entitles (or which with the giving of notice, satisfaction or non-satisfaction of a condition or lapse of time, would entitle) the Builder to exercise a Default Right.

Default Notice means, in respect of a Default, a written notice from the Builder to the Developer referring to this deed and stating:

- (a) which Default has occurred;
- (b) the Remedy Period; and
- (c) the Default Rights (if any) that the Builder proposes to exercise in respect of the Default and the relevant clauses under the Building Contract and/or Security of Payment Act

giving rise to those Default Rights.

Default Right means any right, power, discretion or remedy (whether under the Building Contract or otherwise at law or in equity) to:

- (a) avoid, terminate or rescind, or treat as terminated or repudiated, the Building Contract;
- (b) cease or suspend performance of obligations under the Building Contract or the carrying out of the Works; and
- (c) release the Builder from its obligations under the Building Contract.

Financier means the providers of any facilities, financial arrangements or accommodation provided from time to time to the Developer for the purposes of carrying out the Project and may, where the context permits, include any agent or trustee of such Financiers.

Financier Builder Side Deed means, if there is project finance obtained for the Project and clause 7 applies, the builder side deed entered into with the Financier, the Developer and the Builder on or about the date of this deed, and which must (subject to the requirements of the Financier) generally be in form of Attachment 10 in the PDD, and otherwise in a form acceptable to the Landowner, the Developer and any Financier (acting reasonably).

Financier's Rights has the meaning given to it in clause 7(b).

Government Agency means any government or governmental, semi-governmental, administrative, public, regulatory or judicial entity, body, department, commission, agency or authority.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Home Building Act means the *Home Building Act 1989* (NSW).

Independent Certifier means [insert details] (ABN [insert]) or its successor or replacement appointed in accordance with the Independent Certifier Deed.

Independent Certifier Deed means the deed titled 'Independent Certifier Deed' between the Independent Certifier, the Developer and the Landowner (with or without others) and dated [insert date].

Insolvency Event means, in respect of a person, any of the following occurring:

- (a) 'Insolvency Event' as defined in clause [insert] of the Building Contract; [insert clause reference. If 'insolvency event' is defined differently, amend definition] or
- (b) an 'Insolvency Event' as defined in the PDD.

Land has the meaning given to 'Property' in the PDD.

Loss means a loss, claim, action, damage, liability, cost, charge, expense, penalty, compensation, fine or outgoing suffered, paid or incurred.

Notice means a notice, demand, consent, approval or communication given in accordance with clause 12.

PDD means the agreement titled 'Project Development Deed- [Insert Project]' between the Landowner and the Developer dated [insert date].

PDD Termination Notice means a notice from the Landowner to the Builder referring to this deed and stating the PDD has been terminated.

Performance Security means any unconditional and irrevocable guarantee or payment undertaking issued by a bank or insurance company approved in accordance with the Building Contract, required to be provided by the Builder to, or at the direction of, the Developer under the Building Contract and under which the issuer consents to the assignment by the Developer to the Landowner of the proceeds of the Performance Security.

Power means any right, power, discretion or remedy of the Landowner under or in connection with the PDD, this deed or under applicable law. It includes the Step-in Right, accepting repudiation and granting waivers.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Project means the development of the Land in accordance with the PDD.

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

RAB Developer means a developer as defined in section 4 of the RAB Act.

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

Remedied, Remedy (and similar expressions) means:

- (a) for a Default relating to a failure to pay money, the payment of the outstanding amount due and payable to the Builder;
- (b) for a Default relating to a failure to do any other thing that is able to be done, the doing or procuring of the doing of that thing;
- (c) for a Default relating to an Insolvency Event in respect of the Developer, the Landowner giving a Step-in Notice to the Builder;
- (d) in the case of any other Default:
 - (i) payment of compensation claimed (or such other amount agreed) by the Builder; or
 - (ii) undertaking or procuring a course of action as detailed to the Landowner by the Builder (or otherwise agreed by the Builder),

which the Builder reasonably determines is necessary to remedy or overcome any detriment to the Builder caused by that Default, having regard to the nature of the Default, the time required to pay the compensation or take the course of action and the resources available to the Developer or the Landowner (as the case may be); or

- (e) in any case, the assignment or novation of the Developer's interest in the Building Contract to a person who agrees to remedy the Default in accordance with any of the above paragraphs as applicable.

Remedy Period means, for a Default, the period starting one Business Day after the date the Landowner receives a copy of a Default Notice under clause 4.1 and ending on the last day of the period for Remedy specified in the Default Notice, which last day must be:

- (a) in the case of a Default which is a failure to pay money, at least 30 Business Days after the date the Remedy Period starts;
- (b) in the case of an Insolvency Event in respect of the Developer, at least 40 Business Days after the date the Remedy Period starts; or
- (c) in any other case, at least 30 Business Days after the date the Remedy Period starts, or any longer period:
- (d) allowed for remedy or cure of the Default under the Building Contract;
- (e) agreed between the Landowner and the Builder; or
- (f) as extended in accordance with clause 5.2.

Where clause 7 applies and where the Financier has exercised its right to 'Step-in' under and in accordance with the Financier Builder Side Deed, the Remedy Period will be suspended during any step-in period, and the unexpired part of the Remedy Period will start to run again from the day after the last day of such step-in period provided that the Default is still subsisting.

Security Interest means any:

- (a) 'security interest' as defined in the PPSA;
 - (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge, lien, pledge, trust, power or title retention arrangement, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
 - (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,
- and includes any agreement to create any of them or allow them to exist.

Security of Payment Act means each of the *Building and Construction Industry Security of Payment Act 1999* (NSW) and the *Contractors Debts Act 1997* (NSW) and includes the regulations made under that Act.

Step-in has the meaning given to it in clause 6.1(a).

Step-in Notice means a written notice from the Landowner to the Builder stating that the Landowner elects to Step- In.

Step-in Period means the period from (and including) the earlier of:

- (a) the date of receipt by the Builder of a Step-in Notice; and
- (b) the date the Landowner takes possession of the Land and the Works,
to (but excluding) the earlier of:
 - (c) receipt by the Builder of a Step-out Notice;
 - (d) the date of Remedy of the relevant Default;
 - (e) unless a Step-in Notice has been given for which the Builder has not received a Step-out Notice, the date the Landowner ceases to be in possession of the Land and the Works;
and
 - (f) the date on which the Building Contract terminates or expires, or is novated as contemplated in clause 6.5.

Step-in Right means the right for the Landowner to Step-in granted under clause 6.1(a).

Step-out means for the Landowner to step-out of any of the Developer's rights and obligations under the Building Contract which the Landowner assumed by Stepping-in in accordance with this deed.

Step-out Notice means a written notice from the Landowner to the Builder stating that the Landowner elects to Step-out.

Superintendent has the meaning given to that term in the Building Contract.

Tax means any tax, levy, duty, rate, impost, charge, deduction or withholding (and any related penalty, fine, fee or interest) imposed, levied or assessed by a Government Agency. It includes stamp duty, GST and any transaction taxes and duties.

Uncertified Costs means those amounts payable to the Builder under the Building Contract that are not Certified Costs.

Variation means any variation to the Works from the original scope of the Works set out in the Building Contract, including as a result of a variation under, or an amendment to, the Building Contract.

Works has the meaning given in the Building Contract.

Works Contract means each present and future sub-contract, consultancy agreement, supply agreement, guarantee, warranty, performance bond or other contractual arrangement entered into by or obtained by the Builder in connection with the performance of its obligations under the Building Contract.

Works Materials means materials, plant or equipment which are unfixed to the Works and intended to be incorporated into the Works.

1.3 Interpretation

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;

- (e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (f) a document (including this deed) includes any variation or replacement of it;
- (g) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and includes any notice issued by, and any requirements of, a Public Authority;
- (h) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (i) dollars or \$ is a reference to Australian currency;
- (j) a time of day is a reference to Sydney time;
- (k) the word 'person' includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (l) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (m) if a day by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur by the next Business Day;
- (n) a reference to any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
- (o) a word in the singular includes the plural and vice versa;
- (p) the words 'including', 'for example' or 'such as' when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (q) unless the context otherwise requires, defined terms will extend to all parts of speech which are derivative from that term.

1.4 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

1.5 Developer's Employees and Agents

If this deed prohibits the Developer or Builder from doing a thing, then:

- (a) the Developer or the Builder (whichever is relevant) must do everything necessary to ensure that the Developer's Employees and Agents do not do that thing; and
- (b) the Developer or the Builder may not authorise or cause any person to do that thing.

1.6 Interrelation with Building Contract and the PDD

- (a) Except as this deed expressly provides otherwise, this deed does not affect a person's rights, obligations, powers or remedies under the Building Contract or the PDD.
- (b) The provisions of this deed prevail:
 - (i) to the extent of any inconsistency with the provisions of the Building Contract or the PDD; and
 - (ii) where a party is unable to concurrently satisfy the provisions of this deed and the provisions of the Building Contract or the PDD.
- (c) The failure of the Builder or the Landowner to comply with this deed does not affect the Developer's liability or obligations under the Building Contract or PDD.

- (d) Capitalised terms in this deed have the meaning given to them in the PDD unless otherwise defined in this deed.

1.7 Benefit of undertakings

Except to the extent an undertaking in this deed is expressed to be given in favour of the Developer, the Developer is not entitled to the benefit of any undertaking in this deed and any such undertaking may be varied or waived without the consent of the Developer.

2. General terms

2.1 Builder agreement

The Builder agrees that:

- (a) the exercise of any Power in compliance with this deed will not of itself constitute or cause a Default, entitle the Builder to exercise any Default Right, entitle the Builder to claim a Variation nor give the Builder additional or different rights under the Building Contract;
- (b) it will not interfere with or act to disrupt any exercise of any Power, where that exercise is subject to and in accordance with the terms of this deed;
- (c) nothing in this deed obliges the Landowner to remedy any Default, exercise any Power, take action to complete the Works or provide financial accommodation to any person, or to procure any of those things;
- (d) the Landowner assumes no risk for liability to the Builder arising of itself from the Landowner's ownership of the Land (except where, and to the extent that, such liability arises as a result of the Landowner's wrongful or reckless act after the date of this deed) or the suitability of the Land for the construction of the Works;
- (e) the Landowner will not be liable or be taken to have assumed liability to the Builder under or in connection with the Building Contract or to any other person with an interest under the Building Contract, except as expressly provided in clause 6.2 or pursuant to an undertaking given by the Landowner under clause 5.5(b);
- (f) in exercising the Step-in Right:
 - (i) the Landowner will be entitled to exercise and enforce all or any rights, powers, discretions and remedies, and perform any obligations, of the Developer under or in connection with the Building Contract, as if it were a party in place of (and to the exclusion of) the Developer;
 - (ii) the Landowner may assign or otherwise dispose of the rights and interest of the Developer under the Building Contract in accordance with clause 6.5 without the Builder's consent; and
- (g) the Landowner has the benefit of all representations and warranties made or given by the Builder under the Building Contract.

2.2 Builder general undertakings

The Builder undertakes to the Landowner (unless the Landowner otherwise consents in writing) to:

- (a) not take a Security Interest over the Land or to lodge a caveat against the Land;
- (b) not exercise any right of set-off or equity in relation to the Building Contract, except in accordance with a right arising under statute;
- (c) promptly give the Landowner any information regarding the Building Contract, any Works Contract or the Works which the Landowner reasonably requests; and
- (d) promptly notify the Landowner of any dispute under a Works Contract, and if requested by the Landowner, details of how it is managing or addressing the dispute.

3. Building Contract

3.1 Builder's statutory declaration and entitlement to payment

- (a) With each claim for payment under the Building Contract while a Default subsists or during a Step-in Period, the Builder agrees to give a statutory declaration (declared on the date of the relevant claim) to the Landowner, the Independent Certifier (to the extent the Independent Certifier has a role in respect of the Works under the PDD) and the Developer in the form set out in Schedule 1.
- (b) To the extent permitted by Law, during a Step-in Period, the Builder's entitlement to payment is subject to receipt of a statutory declaration provided pursuant to clause 3.1.

3.2 Building Contract

The Builder and the Developer each undertake to the Landowner (unless the Landowner otherwise consents in writing) to:

- (a) not to terminate the Building Contract for convenience without the Landowner's prior written consent;
- (b) in the case of the Developer only, once a PDD Termination Notice has been issued:
 - (i) not compromise any claim or entitlement against the Builder in relation to the subject matter of the Building Contract; or
 - (ii) not concede any claim or allegation by the Builder of breach or default under the Building Contract;
- (c) not assign any of its rights or interests in, or novate any of its obligations under, the Building Contract or any Works Contract, provided that the Landowner will not unreasonably withhold its consent to an assignment or novation of a Works Contract by the Builder:
 - (i) which is in accordance with the terms of the Building Contract; and
 - (ii) where the Landowner is satisfied that the assignee or novatee has the necessary skills, experience and capability to complete the works the subject of that Works Contract.

A purported act in breach of this clause 3.2 will be ineffective.

3.3 Variations

The Builder and the Developer must not agree to, and the Developer must not require the Builder to, without the consent of the Landowner:

- (a) perform a Variation or act on an instruction that alone or with other instructions effects a Variation;
- (b) do or omit anything which increases the cost, decreases the quality or delays completion of, the Works; or
- (c) to the extent within its power to do so, permit anything in paragraph (a) or (b) to occur, unless the Variation:
- (d) is in accordance with the terms of the PDD; and
- (e) is in accordance with all relevant consents, licences, approvals and authorisations of every Government Agency required to be obtained by it in connection with the execution, delivery and performance of the Building Contract.

3.4 Urgent remedial works

Nothing in this deed prevents the Builder from undertaking any urgent remedial action required to prevent or reduce damage to, or the risk of damage to, the Works or the health and safety of people which it is entitled to take under the Building Contract without the consent of the Developer or the Landowner. However, the Builder agrees to give the Landowner details of any such action as soon as it is practically able to do so.

3.5 Works access

- (a) The Builder must, on reasonable notice and at reasonable times and subject to the

Builder's reasonable work health and safety requirements, give reasonable assistance to the Independent Certifier (to the extent the Independent Certifier has a role in respect of the Works under the PDD) and the Landowner and their representatives and permit them to:

- (i) enter, access and inspect the Land, the Works, any place where the Works are being carried out and any Works Materials which are not on the Land; and
 - (ii) take copies or extracts of all relevant documents and records relating to the Works.
- (b) If the Landowner or its representative accesses the Land other than during a Step-in Period, the Landowner agrees to ensure as far as reasonably practicable that any such actions do not cause any unreasonable disruption to the Works.

3.6 Builder's insurance

The Builder agrees to:

- (a) effect and maintain all insurances required to be effected and maintained by the Builder under the Building Contract and not do, permit or omit anything which may prejudice any insurance policy or any claim under it;
- (b) ensure that each contract works insurance policy will contain:
 - (i) cash-out provisions and terms that a claim for replacement or reinstatement value will be paid even though the relevant asset is not replaced or reinstated;
 - (ii) endorsements that the Landowner, the Developer and the Builder are named as co-insured parties for their respective interests (or, to the extent that is not possible, ensure that the rights and interests of the Landowner and the Developer are noted as persons to whom the insurance cover extends);
 - (iii) an endorsement that the Landowner and the Developer are named as loss payees in respect of the contract works insurance;
- (c) provide to the Landowner a certificate of currency in respect of each insurance policy required to be effected by the Builder under this deed or the Building Contract before the later of the date it accesses the Land and the date of this deed;
- (d) ensure that all proceeds from a claim under an insurance policy mentioned under this clause 3.6 are:
 - (i) in the case of insurance, other than contract works insurance, paid to or on behalf of the relevant insured party; and
 - (ii) in the case of contract works insurance, used to reinstate, or cause to be reinstated, in accordance with the Building Contract and the relevant insurance policy any damaged Works or property the subject of the relevant claim, unless there has been substantial destruction of the Works, in which case the Builder and the Developer must procure that the insurance proceeds are applied as directed by the Landowner;
- (e) do all things necessary and provide all documents, evidence and information necessary to enable the Landowner to collect or recover any proceeds due or to become due in respect of any insurance policy (other than for a claim under workers compensation, public liability or professional indemnity insurance) to the extent that those proceeds have not, with the Landowner's consent, been applied towards the cost of rebuilding or repairing the Works; and
- (f) promptly notify the Landowner of any cancellation, variation or reduction in amount of any insurance policy required to be effected by the Builder under this deed or the Building Contract and the occurrence of any event giving rise to any claim under those insurance policies for an amount exceeding [REDACTED].

3.7 Works Contracts

- (a) The Builder and the Developer must ensure that each Works Contract contains provisions which are sufficient to enable the Builder to assign or novate, without the need for the consent of the relevant sub-contractor or supplier, all of its rights and obligations under the

Works Contract (including the benefit of any guarantees, performance bonds, retention monies and manufacturers and suppliers warranties) to a third party who has the financial capacity to meet its obligations under that Works Contract.

- (b) If a PDD Termination Notice has been issued and the Building Contract is terminated or rescinded (or is capable of being terminated as against the Builder in accordance with its terms), then:
 - (i) the Builder must:
 - (A) within 10 Business Days of being requested to do so by the Landowner, assign or novate all of its rights and obligations under each Works Contract and any guarantees, warranties or performance bonds issued in favour of the Builder in respect of the Works to the Landowner, a replacement builder or other person as nominated by the Landowner (or by the replacement developer with the consent of the Landowner) (**Nominated Assignee**); and
 - (B) execute any document, give any notice and do whatever the Landowner requires to give effect to, complete and perfect each novation or assignment pursuant to this clause 3.7 and must make anyone else who has an interest in a Works Contract or who claims under or in trust for the Builder do the same. Without limitation, the Builder must, as soon as practicable after receiving a notice from the Landowner under this clause 3.7 specifying a Nominated Assignee:
 - (I) deliver to the Nominated Assignee all documents in the possession of the Builder or its agents in relation to the Works Contracts; and
 - (II) pay over to the Nominated Assignee any retention money held by the Builder in connection with the Works Contracts on the condition that, where required by law, the Nominated Assignee holds that money on trust for the relevant sub-contractor or supplier in accordance with the terms of the Security of Payment Act; and
 - (ii) if the Builder fails to comply with its obligations under clause 3.7 (b)(i)(B), the Builder irrevocably authorises the Landowner and each Authorised Representative of the Landowner to execute for and on behalf of the Builder (and in the Builder's name) any documentation required to be executed by the Builder in order to give effect to the novation or assignment and to give all necessary notices to sub-contractors, consultants, suppliers and other third parties. The Builder agrees to ratify anything done on its behalf in accordance with this clause 3.7(b)(ii).

3.8 Works Materials

- (a) The Builder must ensure that when Works Materials are paid for pursuant to the Building Contract:
 - (i) the Developer receives title to those Works Materials free from any Security Interest; and
 - (ii) no person (including any subcontractor or supplier) has the right to remove or repossess those Works Materials.
- (b) While a Default subsists or during a Step-in Period, the Builder agrees with the Developer and the Landowner that the Builder is not entitled to any payment under the Building Contract, and the Landowner is not obliged to make any payment to the Developer or the Builder, for:
 - (i) Works Materials until the Builder has demonstrated to the Independent Certifier's satisfaction that the Works Materials have not been unreasonably ordered and delivered in advance of the requirements of the construction program and project management plans under the Building Contract; or
 - (ii) Works Materials stored outside of the Land (**Off-Site Materials**) unless and until the Builder has demonstrated to the Independent Certifier's satisfaction that:
 - (A) the Builder has fully and finally paid for the Off-Site Materials and title to

the Off-Site Materials has passed to the Builder, free from any Security Interest;

- (B) the Off-Site Materials have been securely stored, labelled as the property of the Developer and are adequately protected and insured (including for transport insurance) in the joint names of the Developer and the Builder;
- (C) without limiting paragraph (B) above, the Builder has perfected, for the purposes of the PPSA, any Security Interest it holds in the Off-Site Materials; and
- (D) the Builder has provided to the Landowner (whether obtained by the Builder or a sub-contractor or supplier under a Works Contract) an unconditional, on- demand bank guarantee in favour of the Developer and the Landowner jointly (in form and substance, and issued by a financial institution, satisfactory to the Landowner) (**Bank Guarantee**) for an amount not less than the value of the Off-Site Materials,

and only if required under the Building Contract.

- (c) If entitled to do so under the Building Contract and the Landowner requests while a Default subsists or during a Step-in Period, the Developer will make a demand under a Bank Guarantee. If it fails to make such demand, the Developer irrevocably and severally authorises, and appoints as its attorney, the Landowner and each Authorised Representative of the Landowner to make such demand on behalf of the Developer (and in the Developer's name) and to execute any documentation required to be executed by, and to perform any actions required to be undertaken by, the Developer in order to obtain payment under the Bank Guarantee. The Developer agrees to ratify anything done on its behalf in accordance with this clause 3.8(c).

3.9 Notice and information

The Builder or the Developer as the case may be must give the Landowner, within 5 Business Days of receipt, a copy of any notice it receives concerning any of the following under or in connection with the Building Contract in respect of the Works:

- (a) delay to, or a claim for an extension of time for, completion of the Works;
- (b) a claim for delay or disruption costs, damages or compensation under or in connection with the Building Contract;
- (c) any material dispute under the Building Contract; or
- (d) the termination of any material subcontract,

and must give the Landowner any information the Landowner reasonably requests about something disclosed in such a notice.

3.10 Meetings and procedures

- (a) The Builder and the Developer agree that a representative of the Landowner and the Independent Certifier may attend and participate in each:
 - (i) project control group meeting in relation to the Works contemplated under the Building Contract;
 - (ii) dispute resolution procedure contemplated by the Building Contract; and
 - (iii) other meeting in relation to the Works that the Developer is entitled to attend.

The Developer agrees to provide the Landowner with reasonable written notice of any such proposed meeting.

- (b) Without prejudice to clause 3.10(a), while a Default subsists or during a Step-in Period the Builder and the Developer will ensure that:***[Drafting note – the project control group meeting requirements are to be aligned in the Building Contract]***
 - (i) project control group meetings are held at least monthly (or otherwise as approved by the Landowner);
 - (ii) all substantial issues relating to the Works are raised for discussion at project control group meetings and that no material decision is taken with respect to such

issues without prior discussion at a project control group meeting;

- (iii) their representatives attend a meeting called by the Landowner on reasonable notice if the Landowner considers it reasonable to do so; and
- (iv) at least 5 Business Days before a meeting referred to in sub-paragraph (i) is to take place the Landowner is provided with any requested information in relation to the Works, including but not limited to details of Variations, the construction program under the Building Contract, progress of the Works, the Builder's or the Developer's personnel, any industrial relations action affecting the Builder or the Developer, all consents, licences, approvals and authorisations of a Government Agency required to be obtained in connection with the performance of the Building Contract and any plans, designs, drawings and specifications.

3.11 Proportionate liability legislation

The Builder indemnifies the Landowner on demand for the difference (if any) between:

- (a) the amount of any Loss by the Landowner for which, but for the *Civil Liability Act 2002* (NSW) (**Liability Act**), the Landowner would have been entitled to recover from the Builder arising out of or in connection with an act or omission of the Builder under this deed or the Building Contract; and
- (b) the liability of the Builder to the Landowner as determined by the courts pursuant to the Liability Act arising out of or in connection with such act or omission of the Builder,

subject to the Landowner using its reasonable endeavours to mitigate the amount of any such Loss to the extent not prejudicial to its interests.

3.12 Payment direction

During a Step-in Period, Insolvency Event in respect of the Developer or termination event (however called) caused by a breach by the Developer under the Building Contract, the Developer irrevocably authorises and directs the Builder to pay as the Landowner directs all liquidated damages and other amounts due to the Developer under the Building Contract. Until directed otherwise by the Landowner during a Step-in Period, Insolvency Event in respect of the Developer or termination event (however called) caused by a breach by the Developer under the Building Contract, the Builder agrees to make those payments directly to the Landowner without set-off or deduction. Any such payment to the Landowner satisfies the Builder's obligation under the Building Contract to pay that amount to the Developer.

3.13 Performance Security

- (a) This clause only applies if a PDD Termination Notice is issued.
- (b) If the Landowner requires a novation or entry into a replacement building contract pursuant to clause 6.5, the Builder must ensure that the Performance Security provided by it to the Developer under the Building Contract is replaced with Performance Security issued in favour of the Landowner, a 'Substitute Developer' or a 'Novatee' (each as defined in clause 6.5) (as applicable), in form and substance acceptable to the Landowner.
- (c) While a Default subsists or during a Step-in Period, the Developer irrevocably authorises and directs the Builder to deliver to the Landowner any Performance Security to be provided to the Developer under the Building Contract. When required under the Building Contract, the Landowner must, following written request by the Developer, promptly release to the Builder any such Performance Security it holds.
- (d) For good and valuable consideration (receipt of which is hereby acknowledged) if a Default subsists or on the first day of a Step-in Period, the Developer, as beneficial owner, assigns all its right, title and interest in any Performance Security to the Landowner.
- (e) If requested by the Landowner, while a Default subsists or during a Step-in Period, the Developer agrees to promptly:
 - (i) execute a notice in a form satisfactory to the Landowner and give it to the issuer of a Performance Security (**Issuer**), notifying the Issuer that all the right, title and interest in the Performance Security has been assigned to the Landowner; and

- (ii) request that any Issuer who receives a notice pursuant to sub-paragraph (i) delivers to the Landowner a copy of such notice with the endorsement signed on behalf of the Issuer.
- (f) The Developer must notify the Landowner as soon as it becomes entitled to, or proposes to, make a demand or take any action in respect of any Performance Security given by the Builder under the Building Contract.
- (g) While a Default subsists or during a Step-in Period, the Builder and the Developer must not replace or change (or agree to replace or change) the type of Performance Security under the Building Contract without the Landowner's prior written consent.
- (h) If entitled to do so under the Building Contract, and the Landowner requests while a Default subsists or during a Step-in Period, the Developer will make a demand under the Performance Security. If it fails to make such demand, the Developer irrevocably and unconditionally authorises, and appoints as its attorney, the Landowner and each Authorised Representative of the Landowner to make such demand on behalf of (and in the name of) the Developer, to execute any documentation required to be executed by, and to perform any actions required to be undertaken by, the Developer in order to obtain payment under the Performance Security. The Developer agrees to ratify anything done on its behalf in accordance with this clause 3.13(h).
- (i) The Landowner is entitled to use any proceeds of the Performance Security for its costs associated with exercising its Step-in Rights and any Default Right under this deed.

3.14 Licence to use plans

- (a) The Developer grants (or if it cannot itself grant, must at its own cost procure the grant) to the Landowner and all other persons authorised by the Landowner at no cost a freely transferable licence to use (including to reproduce, enlarge and reduce) and sub-license the use of all plans, designs, drawings and specifications prepared by or on behalf of, or the rights to which have been novated to, the Developer in connection with the Works for all purposes connected with the Works. The Developer indemnifies the Landowner against any claims made by a third party in relation to such use of those plans and specifications.
- (b) The Builder grants to the Landowner and all other persons authorised by the Landowner at no cost a freely transferable licence to use (including to reproduce, enlarge and reduce) and sub-license the use of all plans, designs, drawings and specifications prepared by or on behalf of, or the rights to which have been novated to, the Builder for all purposes connected with the Works, including to complete the Works if the Building Contract is terminated, to the extent that those plans, designs, drawings and specifications relate to that part of the Land (as defined in the PDD) in respect of which the PDD has been terminated. The Builder indemnifies the Landowner against any claims made by a third party in relation to such use of those plans, designs, drawings and specifications.

3.15 Home Building Act

- (a) The Builder must:
 - (i) comply with all of the Landowner's obligations under the Home Building Act;
 - (ii) indemnify the Landowner against any warranties that the Landowner has to provide, or liabilities that the Landowner may incur, under the Home Building Act to any person;
 - (iii) indemnify the Landowner from breach of the warranties set out in clause 3.15(b);
 - (iv) take out all insurances that the Landowner would be required to take out under the Home Building Act, and bear the cost of any insurances that the Landowner is required to take out under the Home Building Act; and
 - (v) to the extent permitted by Law, be responsible to purchasers under Sale Contracts for the satisfaction of the Landowner's obligations and requirements under the Home Building Act.
- (b) The Builder warrants that:
 - (i) the Works will be done with due care and skill and in accordance with the plans

and specifications set out in the Building Contract;

- (ii) materials supplied by the Builder will be good and suitable for the purpose for which they are used and, unless otherwise required by the Building Contract, will be new;
- (iii) the Works will be performed in accordance with, and will comply with, the Home Building Act and any other Law;
- (iv) the Works will be performed with due diligence and within the time stipulated in the Building Contract, or if no time is stipulated, within a reasonable time;
- (v) if the Works consist of the construction of a dwelling (as defined in the Home Building Act), the making of alterations or additions to a dwelling (as defined in the Home Building Act) or the repairing, renovation, decoration or protective treatment of a dwelling (as defined in the Home Building Act), the Works will result, to the extent of the work conducted, in a dwelling (as defined in the Home Building Act) that is reasonably fit for occupation as a dwelling (as defined in the Home Building Act); and
- (vi) the Works, and any materials used in performing the Works, will be reasonably fit for any specified purpose or result expressly made known to the Builder.

3.16 Design and Building Practitioners Act 2020 (NSW)

- (a) The parties acknowledge and agree that:
 - (i) in respect of Project, the Landowner has not, and will not, perform building work, prepare designs, manufacture or provide building product, supervise, coordinate, project manage or otherwise have substantive control over the carrying out of any Work; and
 - (ii) for the purposes of the DBP Act and the DBP Regulation the person who carries out construction work in respect of the Project will be the Developer and not the Landowner.
- (b) The Developer warrants to the Landowner that it is fully aware of the requirements of the DBP Act and the DBP Regulation and the Developer undertakes to the Landowner to comply with all obligations under the DBP Act in and the DBP Regulation respect of the Project.

3.17 Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW)

- (a) The parties acknowledge and agree that:
 - (i) for the Project each of the Landowner and the Developer may be a RAB Developer but notwithstanding this the Developer will be responsible for, and will perform and satisfy, all obligations and liabilities placed on the RAB Developer under the RAB Act and RAB Regulations;
 - (ii) where any prohibition order, stop work order or building work rectification order is served on either of them under the RAB Act in respect of the Project they will promptly provide a copy to the other and the Developer must immediately comply with all such orders; and
 - (iii) where any compliance cost notice is served on either of them under the RAB Act in respect of the Project they will promptly provide a copy to the other and the Developer must pay the amount owing under the notice to the secretary under the RAB Act, or to the Landowner if the Landowner has already paid the amount to the secretary under the RAB Act.
- (b) The Developer warrants to the Landowner that it is fully aware of, and will comply with, all the requirements of the RAB Act and the RAB Regulations in respect of the Project.

4. Default

4.1 Default Notice

The Builder agrees to give to the Landowner a copy of any Default Notice at the same time as the relevant notice is given to the Developer, together with:

- (a) a copy of any notices given by the Builder under the Building Contract or the Security of

- Payment Act in relation to the relevant Default or the exercise of Default Rights;
- (b) details of:
- (i) the steps claimed as necessary to remedy the relevant Default (including the method of calculation of any amount claimed);
 - (ii) the Certified Costs and Uncertified Costs outstanding as at the date of the Default Notice; and
 - (iii) the estimated costs to be incurred by the Builder from the date of the Default Notice until the end of the applicable Remedy Period.

4.2 Fixed and final claim

The Builder agrees and acknowledges (without prejudice to any accrued rights to damages the Builder may have against the Developer) that:

- (a) the Certified Costs and Uncertified Costs detailed to the Landowner pursuant to clause 4.1(b)(ii) (or as subsequently finalised by the Builder and provided to the Landowner within 20 Business Days of the date of the relevant Default Notice) will be a fixed and final claim in relation to the costs and liabilities of the Developer in respect of all relevant Works performed on or before the date of the relevant Default Notice; and
- (b) it may not claim from the Landowner any other amount accruing in relation to the Works performed before the date of the relevant Default Notice.

4.3 Further information and assistance

The Builder and the Developer agree to:

- (a) provide to the Landowner information within its possession (or within that of its officers, employees or agents) concerning the subject matter of a Default Notice promptly following the Landowner's request; and
- (b) use reasonable endeavours to provide any assistance reasonably requested by the Landowner concerning the remedy of a Default.

4.4 Exercise of Default Rights

- (a) Except to the extent of:
 - (i) any rights the Builder may have under the Security of Payment Act arising out of a Default;
 - (ii) a permitted suspension of Works during a Remedy Period in accordance with clause 5.5; or
 - (iii) Default Rights arising under the Building Contract (after allowing for any grace, remedy or cure period that would have been available to the Developer) in respect of a Default caused by an act or omission of the Landowner occurring during a Step-in Period,

the Builder may only exercise any Default Rights that it has in relation to a Default if:

- (iv) it has given a Default Notice to the Developer and given to the Landowner the documents required in accordance with clause 4.1;
 - (v) the relevant Default has not been Remedied within the relevant Remedy Period and has not ceased to subsist;
 - (vi) in the case of a Default being an Insolvency Event in respect of the Developer, no Step-in Period subsists; and
 - (vii) the Landowner has not requested novation of the Developer's rights and obligations under the Building Contract in accordance with clause 6.5.
- (b) Clause 4.4(a) applies despite any provision of the Building Contract or any other document, and regardless of whether a Step-in Period subsists or the Landowner has exercised the Step-in Right.

5. Remedy

5.1 Right to Remedy

The Landowner may, but is not obliged to, take steps to prevent, Remedy or procure the Remedy of a Default.

5.2 Extension of Remedy Period

If the Landowner requests, the Builder agrees not to unreasonably withhold its agreement to extend a Remedy Period where the Landowner is diligently pursuing Remedy of the relevant Default.

5.3 Builder obligations during Remedy Period or until remedy

Subject only to clause 5.5, if a Default occurs then, until the relevant Remedy Period expires or the relevant Default is Remedied, the Builder must continue to observe and perform all of its obligations under the Building Contract as if that Default had not occurred.

5.4 Effect of Remedy

If a Default is Remedied:

- (a) that Default will be taken to be remedied for all purposes as between the Builder and the Developer (notwithstanding that the time required under the Building Contract for doing any thing may have passed); and
- (b) the Builder will continue to observe and perform all of its obligations under the Building Contract,

as if that Default had not occurred.

5.5 Permitted suspension during Remedy Period

The Builder may exercise a Default Right to suspend carrying out Works under the Building Contract during a Remedy Period if:

- (a) the Landowner has received from the Builder a Default Notice and all documents required in accordance with clause 4.1 in respect of the relevant Default;
- (b) the Landowner has not given the Builder an undertaking within the first 10 Business Days of the applicable Remedy Period to pay all Certified Costs incurred and payable during that Remedy Period (provided that such permitted suspension of Works must cease on the Builder's receipt of that undertaking); and
- (c) no Step-in Period subsists.

6. Step-in, Step-out and novation

6.1 Exercise of Step-in Right

- (a) At any time after a PDD Termination Notice is issued, the Landowner may, by issuing a Step-in Notice to the Builder, elect to step-in to the Developer's rights and obligations under the Building Contract in accordance with this deed (**Step-in**).
- (b) After a Step-in Notice has been issued to the Builder, the Landowner will be entitled to exercise and enforce all or any rights, Powers, discretions and remedies, and perform any obligations, of the Developer under or in connection with the Building Contract, as if the Landowner was a party in place of (and to the exclusion of) the Developer.
- (c) Nothing in this deed obliges the Landowner to exercise a Step-in Right in relation to the Building Contract and the parties acknowledge and agree that if the Landowner does not exercise a Step-in Right in relation to the Building Contract, the Landowner will have no liability to the Developer or the Builder in relation to the Building Contract.

6.2 During Step-in Period

- (a) Subject to clause 6.2(b) and without limiting clause 3.8, during a Step-in Period, the Landowner will only be liable to the Builder for payment of Certified Costs:
 - (i) specified in the Default Notice (if relevant) pursuant to clause 4.1(b)(ii) (or as

subsequently finalised by the Builder and provided to the Landowner within 10 Business Days of the date of the Default Notice); or

- (ii) incurred and payable during the Step-in Period.
- (b) Despite clause 6.2(a) and without limiting clause 3.8, the Landowner will not be responsible or liable (whether or not pursuant to this deed) for any obligation or liability of the Developer to the Builder:
 - (i) which accrued, or is required under the Building Contract to be performed, outside of a Step-in Period, except to the extent that the Landowner becomes liable as a novatee following a novation under clause 6.5; or
 - (ii) while a default or breach by the Builder under the Building Contract subsists.
- (c) During a Step-in Period, the Builder acknowledges and agrees that the Building Contract will remain in full force and effect, and undertakes to:
 - (i) duly and punctually perform all of its obligations under the Building Contract as if the Landowner was a party to the Building Contract in the place of the Developer; and
 - (ii) not take any action detrimental to the Landowner's rights under the Building Contract.
- (d) The Developer acknowledges that the Builder may rely on any Step-in Notice in accepting any exercise by the Landowner of any of the Developer's rights or powers under the Building Contract.

6.3 Step-out

At any time after a Step-in Period has commenced, the Landowner may, by issuing a Step-out Notice, elect to Step-out.

6.4 Step-in and Step-out Notices

- (a) More than one Step-in Notice and Step-out Notice may be given.
- (b) the Landowner agrees to promptly give a copy of each Step-in Notice and Step-out Notice to the Developer (or the External Administrator of the Developer, if relevant), however the Landowner's failure to give a copy of the notice in no way:
 - (i) affects or prejudices the Step-in Right or the effect or validity of a Step-in Notice or a Step-out Notice for the purposes of this deed; or
 - (ii) gives the Developer or any other person any rights or claim against the Landowner.

6.5 Novation or replacement of Building Contract

If a PDD Termination Notice is issued, at any time before termination of the Building Contract:

- (a) the Builder, on request from the Landowner, undertakes to enter into a replacement building contract on substantially the same terms and conditions as the Building Contract with the Landowner or in favour of any person nominated by the Landowner who in the Landowner's opinion has the necessary financial and other resources to perform the same duties and obligations of the Developer under the Building Contract (**Substitute Developer**);
- (b) the Developer, on request from the Landowner, undertakes to novate the Developer's rights, duties and obligations under the Building Contract in favour of any person nominated by the Landowner who in the Landowner's opinion has the necessary financial and other resources to assume the Developer's rights, duties and obligations under the Building Contract (**Novatee**), by entering into a deed with the Developer, the Landowner and the Novatee which provides that:
 - (i) in the case of the first novation only, the Novatee must pay to the Builder all Certified Costs outstanding at the date of the novation;
 - (ii) the Novatee will be liable to the Builder for the performance of all of the Developer's obligations under the Building Contract arising for performance on or after the date of novation, including payment of Certified Costs incurred and payable from the date of the novation;
 - (iii) in the case of a subsequent novation under paragraph (c), the novation will not

affect any liability owed by any prior Novatee to the Builder prior to the novation taking effect; and

- (iv) the Builder will complete the Works and continue to perform the Building Contract for the benefit of the Novatee in accordance with the Building Contract as if the Novatee was a party to the Building Contract in the place of the Developer; and
- (c) if, subsequent to a novation under paragraph (b), the Landowner gives the Builder a notice requesting a further novation of the Building Contract, the Builder undertakes to again novate the Building Contract to another Novatee in accordance with paragraph (a).

The Builder must give the Landowner and the Novatee or Substitute Developer all reasonable assistance (including entering into documents) to effect any replacement or novation contemplated in this clause 6.5.

7. Financier's rights

- (a) This clause 7 and the related definitions only apply if project finance is obtained for the Project.
- (b) The parties acknowledge that the Landowner's Powers under this deed which expressly arise following a Default or Default Right occurring or during a Step-in Period, including the Step-in Right, are subordinate to any rights which the Financier may have in relation to the Building Contract and the Works during any applicable remedy period under the Financier Builder Side Deed (**Financier's Rights**).
- (c) The Landowner may only exercise its Powers under this deed which expressly arise following a Default occurring or during a Step-in Period, including the Step-in Right, if:
 - (i) the Financier has either:
 - (A) waived the Financier's Rights; or
 - (B) ceased exercising the Financier's Rights; or
 - (ii) if the Landowner is otherwise satisfied that the Financier will not exercise any of the Financier's Rights.
- (d) If the Landowner exercises any Powers under this deed, the Builder is not required to make any enquires into the status of the Financier's Rights.

8. Developer responsibility

- (a) Any action under the Building Contract pursuant to the Landowner's exercise of the Step-in Right will be deemed an action of the Developer, except in the case of, and to the extent of, fraud, gross negligence or wilful misconduct on the part of the Landowner.
- (b) Subject to clause 6.2(a) and 6.5, the Developer will continue to be responsible to the Builder for its obligations and liabilities under the Building Contract notwithstanding:
 - (i) the creation, existence or exercise of the Step-in Right;
 - (ii) any assumption of liability by the Landowner to the Builder under this deed; or
 - (iii) the exercise by the Landowner of any rights or powers of the Developer under the Building Contract.

9. Representations and warranties

9.1 By Developer and Builder

The Developer and the Builder respectively represent and warrant each (in respect of itself and its Building Contract only) to the Landowner that:

- (a) (**existence**) it is properly registered and incorporated as a company limited by shares and validly exists in its place of incorporation;

- (b) **(no violation)** its execution, delivery and performance of this deed does not violate any statute or law, judgment, ruling, order, its constitution or any document or agreement which is binding on it;
- (c) **(power)** it has the power, right and necessary corporate authority to enter into and exercise its rights and perform its obligations under this deed;
- (d) **(binding and enforceable)** this deed and the Building Contract are (subject to equitable principles affecting creditor's rights generally) valid, binding and enforceable against it in accordance with their terms, and the transactions contemplated by this deed and the Building Contract are entered into in its best interests and for its benefit;
- (e) **(authorisations)** all consents, licences, approvals and authorisations of every Government Agency required to be obtained by it in connection with the execution, delivery and performance of this deed and the Building Contract have been obtained and are valid and subsisting;
- (f) **(Building Contract)** the Building Contract (including the documents referred to in it) evidences all terms of the agreement between them regarding the Works;
- (g) **(no Security Interest)** the Developer has not granted to the Builder a Security Interest over the Land or the Developer's other assets to secure any obligation or liability owed to the Builder;
- (h) **(other representations)** its representations and warranties in the Building Contract are true and not misleading;
- (i) **(litigation)** no litigation or administrative, arbitration or other proceeding or action (including any action by a Government Agency) is current or pending or, to its knowledge, is likely or threatened which, if adversely determined, would have or be likely to have a material adverse effect upon it or its ability to perform its financial and other obligations under this deed and the Building Contract;
- (j) **(solvency)** it is solvent and there are reasonable grounds to expect that it will continue to be able to pay its debts as and when they are due;
- (k) **(own enquiries)** it has relied on its own investigations and enquiries regarding the transactions contemplated by this deed and the Building Contract and has not relied on any information, advice or opinion given or offered by or on behalf of the Landowner even if in answer to any enquiry by or for it; and
- (l) **(no Default)** so far as it is aware, no Default subsists.

9.2 Reliance and survival

The Developer and the Builder each acknowledge that:

- (a) the Landowner has entered into this deed (and any financial accommodation to be made available to the Developer is made) in reliance on their respective representations and warranties in this clause 9; and
- (b) those representations and warranties survive execution and delivery of this deed.

10. Landowner

Each party acknowledges and agrees that despite any provision of this deed or the PDD:

- (a) the Landowner is not responsible for, and does not provide any guarantee of, any of the Developer's obligations under this deed, the Building Contract or the PDD to any party; and
- (b) nothing in this deed or the PDD obliges the Landowner to exercise any rights under this deed, and the Landowner is not liable to any party if the Landowner does not:
 - (i) exercise any rights; or
 - (ii) otherwise take any steps or action that the Landowner is not specifically obliged to take, under or related to this deed.

11. Costs, expenses and Taxes

11.1 Landowner's Costs and expenses

The Developer must pay or reimburse on demand all costs and expenses (which, in the case of paragraphs (a), (b) and (c) below, are reasonable costs and expenses) of the Landowner (and of its officers, employees and agents), and indemnifies the Landowner on demand for any Loss arising, in connection with:

- (a) the negotiation, preparation, execution, delivery, registration and completion of, and payment of Taxes on this deed;
- (b) a variation, release or discharge of this deed;
- (c) giving a consent or approval or waiving a requirement in connection with this deed;
- (d) exercising, enforcing or protecting a Power, or attempting to do so;
- (e) a Default, the Remedy or attempted Remedy of a Default;
- (f) a novation of the Building Contract (or the Developer's rights and obligations under the Building Contract); or
- (g) obtaining or procuring performance or satisfaction of the Developer's obligations under this deed.

These costs and expenses include any legal costs and expenses (on a full indemnity basis), any professional consultant's fees and the costs (calculated on a time employed basis) of in-house legal counsel.

11.2 Taxes, fees and charges

The Developer must pay all:

- (a) Taxes, fees and charges in connection with this deed or any payment, receipt, supply or other transaction carried out pursuant to, or contemplated by, this deed, including Taxes passed onto the Landowner by another financial institution or supplier of goods and services; and
- (b) fines and penalties for late payment or non-payment of those amounts, except where the Developer places the Landowner in cleared funds to make the payment not less than 5 Business Days before the due date and the Landowner fails to make the payment.

The Developer must pay or reimburse the Landowner on demand for all such amounts which are payable or which the Landowner determines in good faith to be payable.

12. Notices and demands

12.1 Form

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by an Authorised Representative of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified.

Landowner

Name: Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales

Address: 6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150

Email: **[To be completed]**

For the attention of: **[To be completed]**

Developer

Name: MAH Harbour Drive Limited

Address: Level 7, 580 George Street, Sydney NSW 2000

For the attention of: General Manager/Company Secretary

Builder

Name: [REDACTED]

Address: [REDACTED]

For the attention of: [REDACTED]

Email: [REDACTED]

12.2 Delivery

- (a) A Default Notice, PDD Termination Notice, Step-in Notice or Step-out Notice must be:
 - (i) left at the address referred to in clause 12.1; or
 - (ii) sent by prepaid post (airmail, if appropriate) to the address referred to in clause 12.1.
- (b) All other notices must be sent by email to the email address in clause 12.1.
- (c) However, if the intended recipient has notified a changed postal address or changed email address, then the communication must be to that postal address or email address.

12.3 When effective

They take effect from the time they are received unless a later time is specified in them.

12.4 Receipt - postal

If sent by post, they are taken to be received 3 Business Days after posting (or 7 Business Days after posting if sent to or from a place outside Australia).

12.5 Receipt - email

If sent by email, they are taken to be received immediately once sent, unless a notification of delivery failure is received within 15 minutes of the email being sent.

12.6 Receipt - general

If notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

12.7 Validity

Notices are validly given by the Landowner even if returned unclaimed or if the recipient has been wound up or is absent from the place the notice is delivered or sent to.

12.8 Waiver of notice period

The Landowner may waive a period of notice required to be given by the Developer under this deed.

12.9 Other methods

This clause does not limit any provision for giving notices in a Security Interest or the PDD.

13. Assignment

13.1 By Landowner

- (a) If the interest of the Landowner in the PDD and the Land is assigned, transferred or vested in a Government Agency in accordance with the provisions of the PDD, the Landowner must:
 - (i) assign its interest in this deed to that Government Agency; and
 - (ii) procure that Government Agency to execute a deed in favour of the Developer and the Builder covenanting to be bound by the obligations of the Landowner under this deed.
- (b) Each party agrees that:

- (i) the Landowner may only assign its rights and novate or otherwise transfer its obligations under this deed as contemplated by clause 13.1(a); and
- (ii) if requested, it will enter into a novation deed with the Landowner and any assignee of the Landowner's interest in a form acceptable to the Landowner and assignee (both acting reasonably).
- (c) The Landowner (acting reasonably) may disclose to a potential assignee any confidential information of the Developer or the Builder for the purposes of the assignment.
- (d) In the exercise of the Step-in Right, the Landowner may assign the rights and interests, and novate the obligations, of the Developer in relation to, and under, the Building Contract.

13.2 By Builder

The Builder may not assign, transfer or otherwise deal with its rights, interests or obligations under this deed without the Landowner's prior written consent.

13.3 By Developer

The Developer may not assign, transfer or otherwise deal with its rights, interests or obligations under this deed without the Landowner's prior written consent.

14. Termination of this deed

With effect on and from the date on which all of the obligations under the Building Contract have been performed and satisfied, each party agrees that except in respect of:

- (a) any thing that survives termination as provided in this deed; and
- (b) any liability, right or obligation of any party under this deed in relation to any matter arising before the time of termination,

this deed will automatically terminate, any power of attorney granted under this deed is revoked and no party will have any further rights or obligations under or in connection with this deed.

15. General provisions

15.1 Developer acknowledgment

The Developer acknowledges that this deed is for the benefit of the Builder and the Landowner, and not for the benefit of the Developer.

15.2 Equitable relief

Each party:

- (a) acknowledges that damages may not be an adequate remedy for any breach of, or failure by it to comply with, this deed; and
- (b) agrees that, without limiting any other right, remedy or action it has in connection with any actual or threatened breach of, or failure to comply with, this deed by another party, it is entitled to seek equitable relief (including specific performance or injunction or declaratory relief) to restrain any actual or threatened breach of, or failure to comply with, this deed by another party and the other party must not oppose the granting of such relief on the basis that the party seeking such relief has not or will not sustain any actual Loss or damage.

15.3 Prompt performance

If a time is not specified for the performance of an obligation under this deed, it must be performed promptly.

15.4 Exercise of rights

Any party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

15.5 Partial exercise of rights

A single or partial exercise of a right, Power or remedy by the Landowner does not prevent a further exercise of that or an exercise of any other right, Power or remedy.

15.6 Delay in exercising rights

Failure by any party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

15.7 Landowner not liable

Except to the extent expressly provided for in this deed, the Landowner is not liable for any Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, Power or remedy.

15.8 Waiver and variation

A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.

15.9 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Developer or the Builder in connection with this deed with the result that the Landowner's rights, Powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

15.10 Approvals and consent

The Landowner may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

15.11 Remedies cumulative

The rights, Powers and remedies provided in this deed are cumulative with and not exclusive of the rights, Powers or remedies provided by Law independently of this deed.

15.12 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the Landowner, the Developer or the Builder and survives expiry or termination of this deed. Except as otherwise provided for in this deed, it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this deed.

15.13 Further assurances

If asked by the other party (acting reasonably), then a party must, at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind it and its successors under this deed; and
- (b) use its reasonable endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this deed.

15.14 Continuing breaches

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

15.15 Antecedent obligations

The expiry or termination of this deed does not affect the Developer's or the Builder's obligations:

- (a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to the Landowner to enable it to calculate those payments.

15.16 Severability

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction:

- (i) it is severed for that jurisdiction; and
 - (ii) the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (b) This clause 15.16 has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

15.17 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

15.18 Governing Law, jurisdiction and service of process

This deed is governed by the Law in force in New South Wales.

15.19 Jurisdiction

Each party irrevocably and unconditionally:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts with respect to any proceedings which may be brought at any time relating to this deed;
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 15.19.

15.20 Amendments

This deed may only be varied by a deed signed by or on behalf of each party.

15.21 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this deed will operate as a waiver of another breach of that term or of a breach of any other term of this deed.

15.22 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

15.23 Electronic Execution

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

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

15.24 Stamp duty

As between the parties, the Developer must bear and is responsible for all stamp duty on or in respect of:

- (a) this deed;
- (b) the sale, purchase, assignment, novation or transfer or any property contemplated by this deed; and
- (c) any instrument or transaction contemplated by this deed.

15.25 GST

- (a) In this clause 15.25:
 - (i) except where the context suggests otherwise, terms used in this clause 15.25 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
 - (ii) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 15.25.
 - (iii) unless otherwise expressly stated, all consideration to be provided under any other provision of this contract is exclusive of GST.
 - (iv) a reference to GST payable or input tax credit entitlements includes GST and input tax credits to which an entity is notionally liable or entitled in accordance with Division 177 of the GST Act; and
 - (v) a reference to GST or input tax credits to which an entity is liable or entitled includes any GST and input tax credits to which the representative member of any GST group of which that entity may belong is liable or entitled.
- (b) Any payment or reimbursement required to be made under this deed that is calculated by reference to a Loss, cost or expense incurred by a party shall be reduced by the amount of any input tax credit to which that party is entitled for the acquisition to which the loss, cost or expense relates.
- (c) If GST is payable on any supply made by the Landowner under or in connection with this deed (not being a supply the consideration for which is specifically described in this contract as 'GST inclusive'), the recipient of the supply must pay to the Landowner, an additional amount equal to the GST payable on the supply (**GST Amount**).
- (d) The recipient need not pay a GST Amount until the Landowner has given the recipient a tax invoice for the supply to which the payment relates.

Schedule 1 – Builder's statutory declaration

Supporting statement by head contractor regarding payment to subcontractors in relation to works under building contract dated [date] between [name] (as principal) and [name] (as contractor) (Building Contract)

For the purposes of this statement, the term 'subcontractor' has the meaning given in section 4 of the *Building and Construction Industry Security of Payment Act 1999* (NSW).

[insert name of Builder] (Head Contractor) has entered into a contract with the subcontractors listed in the attachment to this statement.

This statement applies for work in relation to the Building Contract between **[start date]** and **[end date]** inclusive (the construction work concerned), subject of the payment claim dated **[date]**.

I, **[full name]** being a director of the Head Contractor or a person authorised by the Head Contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief:

1. All amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).
1. All wages and allowances (including payments in satisfaction of all statutory requirements and the requirements of any applicable industrial award, approved superannuation schemes, redundancy payments, premiums for workers compensation or similar schemes) payable at the date of this declaration to employees of the Head Contractor in respect of their employment on Works under the Building Contract have been paid to them.
2. To the best of my knowledge, and after proper enquiry, no circumstances exist at the date of this declaration which give rise to any entitlement of the Head Contractor to exercise any rights to suspend the Works or any part of them or to terminate the Building Contract.
3. I further confirm the following in respect of previous progress claims (**Previous Progress Claims**) and the Present Progress Claim that have been made in accordance with clause **[insert]** of the Building Contract:

Present Progress Claim (X)	\$[*]
Total Previous Progress Claims (Y)	\$[*]
Total Progress Claims to Date (X + Y)	\$[*]

.....
Signature

.....
Date

.....
Name in full (please print)

.....
Position / title

Attachment to supporting statement

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number / identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number / identifier	Date of works (period)	Date of payment claim (head contractor claim)

Signing pages

EXECUTED as a deed.

Each attorney signing this deed under a power of attorney certifies, by the attorney's signature, that the attorney has no notice of revocation of the power of attorney.

Landowner

Signed sealed and delivered by the Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales by its duly authorised delegate, and I hereby certify that I have no notice of revocation of such delegation, in the presence of

Signature of witness

Name of witness (print)

Signature of delegate

Name of delegate (print)

Office held

Developer

Signed sealed and delivered by MAH Harbour Drive Limited in accordance with Section 127 of the *Corporations Act 2001* (Cth)

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Builder

Signed sealed and delivered by [insert builder name and ABN] in accordance with Section 127 of the *Corporations Act 2001* (Cth)

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)

Attachment 13 - Draft Plans of Subdivision

Attachment 14 Site Investigations

Part A – Site Investigations – Contamination

Includes any site investigations that are required to determine the presence or extent of Contamination on the Property in accordance with Good Industry Practice.

Part B – Site Investigations – Other

Includes any site investigations that are required to determine the presence or extent of any Unexpected Adverse Impacts affecting the Property in accordance with Good Industry Practice.

Attachment 15 Independent Certifier's Deed

Independent Certifier's Deed

Coffs Harbour Social Housing Project

Minister administering the Housing Act 2001 for and on behalf
of the State of New South Wales

(Landowner)

MAH Harbour Drive Limited

(Developer)

[insert]

(Independent Certifier)

Independent Certifier Deed

Coffs Harbour Social Housing Project

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Details

Date

Parties

Name	Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales
ABN	36 433 875 185
Short form name	Landowner
Notice details	6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150 Email: [insert] Attention: [insert]

Name	MAH Harbour Drive Limited
ABN	ABN 69 668 668 586
Short form name	Developer
Notice details	Level 7, 580 George Street Sydney NSW 2000

Name	[insert]
ABN	[insert]
Short form name	Independent Certifier
Notice details	[insert] Email: [insert] Attention: [insert]

Background

- A The Landowner is the owner of the Property.
- B The Landowner and the Developer have entered into the PDD. Under the PDD, the Landowner has appointed the Developer to develop the Property.
- C The PDD contemplates that an independent certifier will be engaged to carry out the Duties.
- D The Landowner and the Developer wish to engage an independent certifier to carry out the Duties.
- E The Independent Certifier has represented to the Landowner and the Developer that it has the experience and expertise in the carrying out of services, duties and responsibilities equivalent to the Duties.
- F The Independent Certifier has agreed to carry out the Duties and its other obligations arising out of or in connection with this deed in accordance with the terms and conditions of this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Terms defined in the PDD

Capitalised terms that are not defined in clause 1.2 and that are defined in the PDD have the same meaning in this deed as in the PDD.

1.2 Defined terms

In this deed:

Builder means [Insert details].

BSD means the builders side deed entered into between Builder, Developer and Landowner [Insert date].

Claim includes any right, debt, cause of action, action, liability or obligation (whether actual, contingent or prospective), claim, entitlement, damages, proceeding, remedy, suit, demand, Costs or Loss of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent and whether at Law (including in tort, for negligence or otherwise), in equity, under statute or contract or otherwise.

Commencement Date means the date the Developer commences the Works.

Developer's Representative means the person listed in the Details, as varied from time to time in accordance with clause 8.2.

Dispute has the meaning given in clause 13.1.

Dispute Notice has the meaning given to that term in clause 13.2(a).

Duties means:

- (a) all of the powers, obligations, duties, functions, services and tasks conferred on, or contemplated to be carried out by, the Independent Certifier under this deed and the Transaction Documents (including the General Duties and functions as described in Schedule 3), as varied from time to time in writing by the Principal Parties; and
- (b) without limiting subparagraph (a) above, all other things and tasks not described in this deed or the Transaction Documents if those things or tasks should have been reasonably anticipated by an experienced and professional provider of services equivalent to the Duties as being necessary for the carrying out of the Duties or which are otherwise capable of inference from this deed or the Transaction Documents.

Expert has the meaning given to that term in clause 13.4.

Fee means the amount payable to the Independent Certifier for the costs and expenses of the Independent Certifier, including for the Independent's Certifier's professional fees and any costs incurred by the Independent Certifier of its performance of the Duties as determined in accordance with the Schedule of Rates set out in Schedule 2.

General Duties means those duties, services and responsibilities set out Schedule 3 and anything incidental or necessary for the performance of those duties, services and responsibilities.

HAFF Project Agreement has the meaning given to it in the PDD.

Independent Certifier's Representative means the person listed in the Details, as varied from time to time in accordance with clause 8.3.

Insolvency Event means any of the following events:

- (a) an order is made:
 - (i) that the corporation be wound up; and/or
 - (ii) appointing a liquidator or provisional liquidator in respect of the corporation, or one of them is appointed, whether or not under an order;

- (b) a resolution is passed to appoint an administrator or an administrator is appointed to the corporation;
- (c) a receiver or a receiver and manager is appointed to the corporation;
- (d) the corporation enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or an assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) the corporation resolves to wind itself up, or otherwise dissolve itself, or gives notice of an intention to do so or is otherwise wound up or dissolved;
- (f) the corporation is, or states that it is, insolvent;
- (g) as a result of the operation of section 459F(1) of the *Corporations Act*, the corporation is taken to have failed to comply with a statutory demand;
- (h) the corporation is, or makes a statement from which the other Party may reasonably conclude that the corporation is, the subject of an event described in section 459C(2)(a) to (f) inclusive or section 585 of the *Corporations Act*;
- (i) the corporation takes any step to obtain protection, or is granted protection, from its creditors under any applicable law;
- (j) a mortgagee takes possession of any one of the assets or undertakings of the corporation; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under any Law.

Key Personnel means the persons listed in Item 1 of Schedule 1.

Landowner's Representative means the person listed in the Details, as varied from time to time in accordance with clause 8.1.

Law includes all statutes, regulations, by-laws, ordinance and other delegated legislation and any rule of common law or equity from time to time.

Parties means the Principal Parties and the Independent Certifier.

Payment Schedule has the meaning given to that term in clause 11.3(a)(ii).

PDD means the Project Development Deed between the Principal Parties dated **[insert]**.

Principal Contractor means the person appointed for the Project as principal contractor under the *Work Health Safety Regulation 2017* (NSW).

Principal Parties means both Landowner and/or the Developer (as the context permits).

Property means the land described in Folio Identifiers 14/516300, 15/11/504105 and 100/DP1041655, as consolidated or subdivided from time to time in accordance with the PDD.

Resolution Institute means Resolution Institute or, if no such organisation exists, then the President of the Law Society of New South Wales.

Schedule means a schedule to this deed.

Senior Representative means in respect of a Party that person specified in Item 2 of Schedule 1, as amended from time to time and notified to the other Parties in writing.

Substitute Certifier has the meaning given in clause 5(d).

Termination Event means:

- (a) the occurrence of an Insolvency Event in respect of the Independent Certifier;
- (b) a failure, refusal or inability of the Independent Certifier to perform all or any part of its obligations, duties and functions under this deed or the PDD within the time required under this deed or the PDD (as applicable); or

- (c) a material breach by the Independent Certifier of any of its obligations, duties and functions under this deed which:
 - (i) is not capable of remedy; or
 - (ii) is capable of remedy and the Independent Certifier fails promptly to rectify such breach within the period specified by the Principal Parties in a written notice issued jointly from the Principal Parties requesting the Developer to remedy the breach.

Works means those parts of the 'Works' (as defined in the PDD).

1.3 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (f) a document (including this deed) includes any variation or replacement of it;
- (g) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and includes any notice issued by, and any requirements of, a Public Authority;
- (h) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (i) dollars or \$ is a reference to Australian currency;
- (j) a time of day is a reference to Sydney time;
- (k) the word 'person' includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (l) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (m) if a day by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur by the next Business Day;
- (n) a reference to any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body;
- (o) a word in the singular includes the plural and vice versa;
- (p) the words 'including', 'for example' or 'such as' when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (q) unless the context otherwise requires, defined terms will extend to all parts of speech which are derivative from that term.

1.4 Headings

Headings are for convenience only and do not affect the interpretation of this deed.

1.5 Developer's Employees and Agents

If this deed prohibits the Developer or Independent Certifier from doing a thing, then the Developer or Independent Certifier (whichever is relevant):

- (a) must do everything necessary to ensure that their Employees and Agents do not do that thing; and
- (b) may not authorise or cause any person to do that thing.

2. Representations and warranties

2.1 Authority to act

The Independent Certifier represents and warrants to each of the Principal Parties that:

- (a) it is a corporation duly registered and validly existing under the laws of the place of its registration;
- (b) it is not a partner, joint venturer or agent of the Landowner or the Developer; and
- (c) other than as expressly set out in this deed or any other agreement between the Independent Certifier and either or both of the Principal Parties:
 - (i) it has no right or authority to give any directions to the Landowner or the Developer; and
 - (ii) it has no authority to waive any terms or conditions of the Transaction Documents, or to amend, vary or discharge or release the Landowner or the Developer from any of their respective obligations under the Transaction Documents.

2.2 Conflicts of interest

The Independent Certifier represents and warrants that:

- (a) it has disclosed all contractual relationships that it has in connection with the Works to the Principal Parties;
- (b) at the date of its execution and delivery of this deed, no conflict of interest exists or is likely to arise in connection with the performance of the Duties and the discharge of its duties and functions under this deed; and
- (c) if, during the term of this deed, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the Principal Parties immediately in writing of that conflict or risk of conflict and comply with all reasonable requests or directions of the Principal Parties jointly in relation to such conflict or risk of conflict.

3. Appointment

3.1 Engagement of Independent Certifier

The Independent Certifier is engaged by the Principal Parties as an independent certifier to carry out the obligations, functions, duties and services of an independent certifier in accordance with the Transaction Documents and this deed, which obligations, functions, duties and services include the carrying out of the Duties.

3.2 Performance of the Duties

In carrying out the Duties the Independent Certifier must:

- (a) comply with all Laws;
- (b) act as an expert and not as an arbitrator;
- (c) act:
 - (i) at all times independently, fairly and honestly;

- (ii) with due expedition and without delay and in any event within the time requirements for the carrying out of its obligations specified in this deed and the Transaction Documents, or if no time limit is specified, within a reasonable time; and
- (iii) arrive at a reasonable measure of the value of work, quantities or time;
- (d) exercise all reasonable skill, care and diligence expected of a properly qualified and competent professional rendering services of an equivalent nature to the Duties and experienced in projects of a similar size, scope and complexity as the Project;
- (e) take into consideration to the extent relevant all documents, information and other written and oral material that the Principal Parties place before the Independent Certifier including documents, information and material relating to the facts the subject of any dispute between the Principal Parties;
- (f) not waive or vary any requirements in the Transaction Documents;
- (g) except as expressly permitted under this deed or the Transaction Documents, not discharge or release a Principal Party from any of its obligations arising out of the Transaction Documents;
- (h) ensure that only Key Personnel carry out the Duties; and
- (i) carry out the Duties in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Principal Parties) except where it is the unavoidable consequence of performing the Duties.

3.3 Certification

In giving any certificate or performing any independent duty, the Independent Certifier:

- (a) must act independently, honestly, fairly and diligently and within any time prescribed (except where the Transaction Documents expressly requires otherwise);
- (b) must arrive at a reasonable measure of the value of work, quantities or time;
- (c) may request the Landowner or the Developer or both, to provide any information which the Independent Certifier considers necessary or desirable for the performance of the Duties; and
- (d) must provide a copy of any such certificate or determination made in the course of performing the Duties to the Principal Parties on the same day of issue of the certificate or determination.

3.4 Binding certifications and determinations

The Parties acknowledge and agree that all certifications or determinations provided by the Independent Certifier in accordance with the Transaction Documents are final and binding on the Principal Parties except in the case of manifest error, or if the Independent Certifier has acted fraudulently.

4. Term of engagement

4.1 Term

The engagement of the Independent Certifier commences on the Commencement Date and, unless terminated earlier under clause 4.2, continues until the Independent Certifier has completed and discharged all of its Duties and functions under this deed and the Transaction Documents.

4.2 Termination

This deed will terminate immediately on the earlier of:

- (a) the termination of the PDD to which this deed relates (in which case this deed terminates automatically);
- (b) termination of this deed in accordance with clause 15, or

- (c) the expiry of the term as contemplated by clause 4.1

save in relation to any matter which remains outstanding and in progress as at the date of termination.

5. Change to scope of Duties, suspension of Duties and appointment of Substitute Certifier

- (a) The Principal Parties may, by joint written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Duties (including an addition or omission) and the Independent Certifier must comply with that direction.
- (b) The Fee to be paid to the Independent Certifier in relation to a change to the Duties referred to in clause 5(a) will be determined in accordance to the Schedule of Rates as set out in Schedule 2.
- (c) The Principal Parties may, by joint written notice to the Independent Certifier, direct the Independent Certifier to suspend any or all of the Duties for the period of time specified in the notice, in which case the Independent Certifier may be entitled to an adjustment to the Fee for causes other than as a result of the Independent Certifier's failure to comply with its obligations, including the costs of demobilisation and remobilisation which are reasonable having regard to the nature and period of time for which the notice applies.
- (d) The Independent Certifier acknowledges and agrees that the Principal Parties may jointly appoint another certifier (**Substitute Certifier**) to carry out any Duties which are omitted as a result of a change to the Duties as directed under clause 5(a), and any decision of a Substitute Certifier appointed shall be treated (between Landowner, the Developer and the Independent Certifier) as if it were a decision of the Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the Independent Certifier under the Transaction Documents in connection with those Duties.

6. Independent Certifier's acknowledgments

6.1 Terms of Transaction Documents

The Independent Certifier acknowledges that:

- (a) it has received a copy of the Transaction Documents;
- (b) it has read, and is familiar with, the terms of the Transaction Documents; and
- (c) its obligations under this deed extend to and include the obligations, functions, duties and services (and associated timeframes) of the 'Independent Certifier' arising under the Transaction Documents.

6.2 Reliance

The Independent Certifier:

- (a) acknowledges that each of the Principal Parties:
 - (i) is relying on the skill, expertise and experiences of the Independent Certifier in the performance of its obligations under this deed; and
 - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this deed;
- (b) warrants to the Principal Parties that, in performing the Duties, it will act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise and experience which would be reasonably expected of a professional providing services similar to the Duties within the design and construction industries;
- (c) must, at all times, act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Transaction Documents (and, where no time is prescribed, within a reasonable time); and

- (d) without limiting clauses 6.2(a) and 6.2(b), acknowledges that the Principal Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this deed or the Transaction Documents.

7. Information, access and assistance

7.1 Information

- (a) The Principal Parties must each provide such information and documentation to the Independent Certifier as:
 - (i) is required to be provided under this deed or the Transaction Documents and at the times that information and documentation is required to be provided under this deed or the Transaction Documents; and
 - (ii) otherwise is reasonably required by the Independent Certifier to enable it to perform and discharge the Duties and its duties and functions under this deed, and as soon as reasonably practicable after the Independent Certifier requests that information and documentation.
- (b) The Independent Certifier must take reasonable care of all documents prepared by the Independent Certifier or entrusted to the Independent Certifier by a Party or the Parties, until handed over or returned by the Independent Certifier to the relevant Party or Parties.

7.2 Access

- (a) The Principal Parties must provide such access to:
 - (i) the relevant buildings constructed on the Property;
 - (ii) the Works;
 - (iii) the Property; and
 - (iv) any place where work under or for the purpose of the relevant Transaction Documents is being undertaken as may reasonably be required by the Independent Certifier, or as is necessary, from time to time,to enable the Independent Certifier to perform the Duties and its duties and functions under this deed.
- (b) The Independent Certifier, when accessing those areas referred to in clause 7.2(a), must:
 - (i) comply with any reasonable access requirements and procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) stipulated by the Principal Parties or the Principal Contractor and ensure that its officers, employees, agents and contractors comply with such requirements and procedures; and
 - (ii) not, and must use reasonable endeavours to ensure that its officers, employees, agents and contractors do not, unreasonably obstruct or interfere with the carrying out of the:
 - (A) Works; or
 - (B) the Principal Parties' or the Principal Contractor's obligations arising under or in connection with the Transaction Documents.

7.3 Assistance

- (a) The Principal Parties agree to:
 - (i) promptly provide to the Independent Certifier such assistance as the Independent Certifier may reasonably require in connection with the performance of the Duties and the discharge of its duties and functions under this deed; and
 - (ii) not interfere or attempt to influence the Independent Certifier so that the Independent Certifier breaches its obligations under clause 3.2(c)(i) or 3.3(a).

- (b) The Landowner or the Developer (as applicable) must contemporaneously provide the other Principal Party to this deed with a copy of any information provided to the Independent Certifier under clause 7.

7.4 Submissions

- (a) At any time prior to the Independent Certifier making a determination under this deed or the Transaction Documents, either Principal Party may provide the following to the Independent Certifier (and if provided must contemporaneously provide a copy to the other Principal Party):
 - (i) a statement in writing detailing the nature of any legal and factual issues associated with or relevant to the Independent Certifier's determination and its contentions in relation to those issues;
 - (ii) all statements and copies of all documents and information on which it relies to support its contentions;
 - (iii) any expert reports on which it relies, unless either Principal Party is of the reasonable opinion that such expert report is or may be subject to legal professional privilege; and
 - (iv) its written submissions on the legal and factual issues involved, unless either Principal Party is of the reasonable opinion that such submissions are or may be subject to legal professional privilege.
- (b) The Independent Certifier must consider any submissions provided to it pursuant to clause 7.4(a), provided it receives the submissions in a sufficient and reasonable time to enable it to comply with the time stipulations for making the relevant determination specified in this deed or the Transaction Documents.

7.5 Reliance on information provided

The Independent Certifier is entitled to rely (as between it and the Principal Parties) without independent verification upon information provided to it by a Principal Party as being true and correct in all material respects unless:

- (a) the information is manifestly incorrect;
- (b) the information is provided on a qualified basis;
- (c) contradictory information is provided by the other Principal Party; or
- (d) the relevant Principal Party providing the information subsequently informs the Independent Certifier respectively of any change to the information provided.

7.6 Project Control Group

- (a) The Principal Parties may jointly invite the Independent Certifier to attend and participate in (but not vote at) the meetings of the Project Control Group established in accordance with clause [21] of the PDD, as required.
- (b) The Developer undertakes to give the Independent Certifier reasonable prior written notice of any such meetings.
- (c) Within a reasonable time of receiving a request, the Developer will provide to the Independent Certifier an extract of the minutes of those meetings to the extent that they are relevant to the discharge of the Independent Certifier's Duties.

7.7 Consultants

- (a) If the Independent Certifier considers that it is necessary in order to properly perform the Duties, that it engage consultants or contractors it will give a notice to this effect to the Principal Parties.
- (b) If the Principal Parties do not approve the engagement of the consultants or contractors requested by the Independent Certifier, such approval not to be unreasonably withheld or delayed, then the Independent Certifier must not engage those consultants or contractors, but the Independent Certifier will not be liable to the Principal Parties for any Claim arising out of or in connection with the non-engagement of the relevant consultant or contractor.

- (c) If the Principal Parties agree with the Independent Certifier's request, then:
 - (i) the Independent Certifier must engage the relevant consultant or contractor on terms reasonably approved by the Principal Parties; and
 - (ii) the Principal Parties will share equally the costs of engaging the relevant consultant or contractor.

7.8 Provision of documents

The Independent Certifier must provide to both of the Principal Parties a copy of any document or other information relevant to the Duties, as is reasonably requested by a Principal Party in writing and in the possession of the Independent Certifier.

8. Representatives

8.1 Landowner's Representative

- (a) The Landowner must appoint for the term of this deed a Landowner's Representative with authority to act on behalf of the Landowner for the purposes of this deed.
- (b) The Landowner may replace or substitute the person appointed as the Landowner's Representative by written notice to the Developer and the Independent Certifier.

8.2 Developer's Representative

- (a) The Developer must appoint for the term of this deed a Developer's Representative with authority to act on behalf of the Developer for the purposes of this deed.
- (b) The Developer may replace or substitute the person appointed as the Developer's Representative by written notice to Landowner and the Independent Certifier.

8.3 Independent Certifier's Representative

- (a) The Independent Certifier must appoint an Independent Certifier's Representative with authority to act on behalf of the Independent Certifier for the purposes of this deed and the Transaction Documents.
- (b) The Independent Certifier must not replace or substitute the person appointed as the Developer's Representative without obtaining the Landowner's and the Developer's prior written approval.
- (c) The Independent Certifier must replace its representative where in the reasonable opinion of the Principal Parties, the Independent Certifier's Representative:
 - (i) is not performing the Duties in accordance with the terms of this deed and the Transaction Documents;
 - (ii) has a conflict of interest; or
 - (iii) does not hold the appropriate qualifications, licences and registrations in accordance with the requirements of any Laws, necessary for the performance of the Duties.

9. Liability and indemnity

9.1 Limitation of liability

- (a) Except as specified in clause 9.1(b), the Independent Certifier's liability to the Principal Parties:
 - (i) in connection with this deed or the Independent Certifier's performance of the Duties and its other obligations under this deed;
 - (ii) in tort (including negligence) or under any Law,
 notwithstanding any other provision of this deed:

- (iii) does not include liability for any uninsured loss of profit, loss of revenue, loss of financial opportunity or other uninsured consequential or indirect loss.
- (b) For the avoidance of doubt, the limitations on the Independent Certifier's liability contained in clause 9.1(a) do not limit or restrict in any way:
 - (i) the Independent Certifier's obligations by way of indemnity under clause 9.2 for property loss or damage or injury or death caused by the Independent Certifier;
 - (ii) the Independent Certifier's liability for loss, damage, and expense caused by the reckless, malicious, deliberate or fraudulent acts of employees of the Independent Certifier or its agents, whilst in the course of their employment; and
 - (iii) any liability that cannot be limited by Law.

9.2 Indemnity

- (a) The Independent Certifier agrees to indemnify, keep indemnified and hold harmless the Principal Parties from and against all Claims that the Principal Parties or either one of them suffers, incurs or may suffer or incur arising out of or in connection with an act, omission or breach of the Independent Certifier or its employees, officers, contractors or agents.
- (b) The Independent Certifier's liability to indemnify the Landowner will be reduced proportionally to the extent that any act or omission of the Landowner directly contributed to the relevant Claim.
- (c) The Independent Certifier's liability to indemnify the Developer will be reduced proportionally to the extent that any act or omission of the Developer directly contributed to the relevant Claim.

10. Insurance

10.1 Public liability

From the Commencement Date and throughout the term of this deed, the Independent Certifier must effect and maintain adequate public liability insurance with a limit of indemnity of not less than [REDACTED] per occurrence, covering the Independent Certifier and its employees, officers, subcontractors and agents for liability to the Principal Parties and any other person for loss of or damage to property and the death of or injury to any person.

10.2 Workers' compensation

The Independent Certifier must effect and maintain insurance against such liability as may arise at common law or by virtue of any relevant workers' compensation legislation in respect of any person employed by the Independent Certifier in connection with the Duties.

10.3 Professional indemnity insurance

- (a) Before commencing the carrying out of the Duties, the Independent Certifier must take out and maintain professional indemnity insurance in a form and with an insurer acceptable to the Principal Parties with a limit of indemnity of not less than the amount stated in Item 3 of Schedule 1 for each and every claim.
- (b) The Independent Certifier must maintain the insurance policy required to be effected under clause 10.3(a) from the Commencement Date until the date that is 6 years after the later of:
 - (i) the date of expiry of the term in accordance with clause 4.1; and
 - (ii) the date the last decision of the of the Independent Certifier is required to be made pursuant to the Independent Certifier's appointment under this deed.

10.4 Evidence of insurance

- (a) The Independent Certifier must provide to the Principal Parties, annual certificates of currency to confirm that the professional indemnity insurance policy required under clause 10.3 has been effected and is being maintained in accordance with this deed.
- (b) As and when required by the Principal Parties, the Independent Certifier must produce for inspection documentary evidence that that any other insurances required under this deed have been effected and are being maintained in accordance with this deed.

10.5 Notice of matter affecting insurance

The Independent Certifier must:

- (a) immediately notify the Principal Parties of any event which could affect its insurance cover or if any policy is cancelled or avoided; and
- (b) not allow a policy to lapse without the Principal Parties' prior written consent.

11. Payment and payment procedure

11.1 Fee

The Developer and Landowner must each pay 50% of the Fee in accordance with this deed.

11.2 Payment claim

- (a) The Independent Certifier must issue to the Principal Parties on the first Business Day of each month, a progress claim setting out the proportion of the Fee that the Independent Certifier is entitled to claim in the period to which the progress claim relates, for the Duties performed by the Independent Certifier during that period.
- (b) Each progress claim must be accompanied by:
 - (i) a supporting statement in accordance with section 13(7) of the *Building and Construction Industry Security of Payment Act 1999*; and
 - (ii) a duly signed written statement in a form approved by the Principal Parties and which complies with the Independent Certifier's obligations under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Workers' Compensation Act 1987* (NSW) to provide a statement to the "principal contractor" as contemplated by those Acts.

11.3 Payment Schedule

- (a) Within 20 Business Days of receiving the progress claim from the Independent Certifier, the Principal Parties must:
 - (i) determine the amount of the Fee then due and payable to the Independent Certifier; and
 - (ii) issue a payment certificate in respect of the Fee and any other amount which, in the opinion of the Principal Parties, is payable under this deed (**Payment Schedule**).
- (b) The Payment Schedule must:
 - (i) identify the progress claim to which the Payment Schedule relates;
 - (ii) indicate the amount of the payment the Principal Parties propose to make; and
 - (iii) if the amount the Principal Parties proposes to pay is less than the claimed amount, indicate why the amount proposed to be paid is less and (if it is less because the Principal Parties are withholding payment for any reason), the Principal Parties' reasons for withholding payment.

11.4 Payment

Subject to clauses 11.5, 11.6 and 12.6:

- (a) If a Payment Schedule identifies that the Principal Parties are to pay the Independent Certifier then, subject to clause 12.6, the Developer and Landowner must each pay to the Independent Certifier 50% of the relevant amount identified in the Payment Schedule within 20 Business Days of the issue of the Payment Schedule; and
- (b) if a Payment Schedule identifies that the Independent Certifier is to pay the Principal Parties, then the Independent Certifier must pay the Developer and Landowner each 50% of the amount identified in the Payment Schedule within 20 Business Days of the issue of the Payment Schedule.

11.5 Payment on account

Payment of moneys shall not be evidence of the value of the Duties or an admission of liability or evidence that Duties have been performed satisfactorily or in accordance with the terms of the Deed and the Transaction Documents, but will be payment on account only.

11.6 Right to set-off

The Principal Parties may at any time deduct from moneys otherwise due to the Independent Certifier any amount due and payable from the Independent Certifier to the Developer or the amount of any Claim which the Developer may, acting reasonably, have against the Independent Certifier arising out of or in connection with the Duties.

12. GST

12.1 Interpretation

Words or expressions used in this clause 12 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), have the same meaning in this clause.

12.2 GST inclusive amounts

For the purposes of this deed where the expression 'GST inclusive' is used in relation to an amount payable or other consideration to be provided for a supply under this deed, the amount or consideration will not be increased on account of any GST payable on that supply.

12.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this deed, unless specifically described in this deed as 'GST inclusive', does not include an amount on account of GST.

12.4 Gross up of consideration

Despite any other provision in this deed, if a Party (**Supplier**) makes a supply under or in connection with this deed on which GST is imposed (not being a supply the consideration for which is specifically described in this deed as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this deed but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

12.5 Reimbursements (net down)

- (a) Despite any other provision in this deed, if a payment to be made under this deed is calculated by reference to or as a percentage of another amount, that payment will be calculated by reference to or as a percentage of that other amount net of any GST component.
- (b) If a payment to a Party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that Party, then the payment will be

reduced by the amount of any input tax credit to which that Party is entitled for that loss, cost or expense.

- (c) A Party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be made, that its entitlement is otherwise.

12.6 Tax invoices

- (a) Except as required by law, the Recipient need not make a payment for a taxable supply made under or in connection with this deed until the Supplier has given the Recipient a tax invoice for the supply to which the payment relates.
- (b) The Supplier must give the Recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with this deed within seven days after the date the Supplier becomes aware of the adjustment event.

13. Dispute resolution

13.1 Application of clause

If a dispute, difference or Claim arises out of or relates to this deed or the Duties (including any dispute as to breach or termination or as to any claim in tort, in equity or under any statute) (**Dispute**), except in relation to a certification or determination to which clause 3.4 applies, the Parties agree that before exercising any rights they may have at Law they must use their best endeavours to resolve the Dispute in accordance with this clause 13.

13.2 Dispute Notice

- (a) A Party to this deed claiming that a Dispute has arisen must give written notice to the other Parties which complies with clause 13.2(b) (**Dispute Notice**).
- (b) A Dispute Notice must:
 - (i) specify the Dispute, details of the Party's reasons for being dissatisfied and the position which the Party believes is correct;
 - (ii) be signed by a person duly authorised by the Party; and
 - (iii) be provided in accordance with clause 17.

13.3 Negotiation of Senior Representatives

- (a) Within 5 Business Days of receipt of a Party's Dispute Notice, the Dispute is to be referred to the Senior Representatives.
- (b) If the Senior Representatives are unable in good faith to settle a dispute within a further 10 Business Days after receipt of the Dispute Notice (or such other period as the Senior Representatives may agree in writing) then the Dispute must be submitted to expert determination in accordance with clauses 13.4 and 13.5.
- (c) A Party may replace its Senior Representative by notice in writing to the other Parties.

13.4 Appointment of Expert

If a Dispute has not been settled under clause 13.3:

- (a) within 15 Business Days after receipt of the Dispute Notice, the Parties must attempt to agree on the appointment of an appropriate person to determine the Dispute; and
- (b) if the Parties cannot agree on a person under clause 13.4(a), a Party to the Dispute may request that the President of the Resolution Institute appoint the relevant person (which determination shall be final and binding),

(**Expert**).

13.5 Expert Determination

- (a) The Expert is to act and make a decision as an expert and not as an arbitrator and in accordance with Laws.
- (b) Each Party must direct the Expert to make a determination in relation to the Dispute put before the Expert within 10 Business Days of complete submissions to the Expert or such other time as may be directed by the Expert.
- (c) The Expert may direct the time in which the Parties are to provide their submissions to the Expert.
- (d) Each of the Parties is entitled to make written submissions to the Expert so appointed upon the matter the subject of the Dispute. The Expert is entitled to appoint other persons to assist in the determination.
- (e) When any Dispute referred to in this clause has been referred for determination the Parties will each use their best endeavours to make available to the Expert all facts and circumstances which the Expert may require in order to settle or determine such dispute or difference and shall ensure their respective employees, contractors or agents are available to appear at any hearing or any enquiry called for by the Expert. Each of the Parties is entitled to be legally represented at any hearing or enquiry called for by the Expert.
- (f) The Expert must:
 - (i) issue a draft certificate stating the Expert's intended determination giving each disputing party 10 Business Days to make further submissions;
 - (ii) issue an Expert's final certificate stating the Expert's determination having had regard to any further submissions received under clause 13.5(f)(i); and
 - (iii) act with expedition with a view to issuing the Expert's final certificate as soon as practicable.
- (g) The Parties must sign all documents and do all things reasonably necessary to affect the appointment of the Expert and to give effect to the intention of clause 13.4 and this clause.

13.6 Proceeding with obligations

Each Party must each continue to perform its obligations under this deed notwithstanding the conduct of any process under this clause 13.

13.7 Referral to litigation

If the Dispute is not resolved:

- (a) within 30 Business Days of a Party's receipt of a Dispute Notice (or such further period as agreed in writing by the Parties); or
- (b) after the Expert issues its final certificate under clause 13.5(f)(ii),

whichever is the earlier to occur, then the Dispute may, at the option of either Party, be referred to litigation.

13.8 Interlocutory, interim or equitable relief

Nothing in this clause 13 affects or limits or is intended to affect or limit the rights of a Party to seek or obtain urgent interlocutory, interim or equitable relief.

13.9 Joinder to other disputes

Where a Dispute under this deed relates to the facts and circumstances giving rise to a dispute under the Transaction Documents, the Parties must consent to:

- (a) consolidation of the determination of the disputes; and
- (b) the disputes being heard at the same time,

and the Parties will be bound by that determination in the same way as they would be bound if dispute resolution had been effected under the document to which they are parties.

14. Assignment and subcontracting

- (a) The Independent Certifier must not assign this deed or subcontract any part of the Duties without the prior written consent of the Principal Parties, which may be given or withheld in their absolute discretion, and if given, on such terms as the Principal Parties think fit in their absolute discretion.
- (b) The Independent Certifier remains responsible for the performance of the Duties in accordance with this deed notwithstanding any such subcontracting, and will be liable for the acts and omissions of any subcontractor as if they were the acts or omissions of the Independent Certifier (including any consultant or any subcontractor referred to in clause 7.7).

15. Termination

15.1 Termination by the Principal Parties

The Principal Parties jointly may terminate this deed:

- (a) immediately by written notice to the Independent Certifier if a Termination Event occurs; or
- (b) upon 30 Business Days written notice to the Independent Certifier.

15.2 No effect on accrued rights or remedies

Termination of this deed does not affect any accrued rights or remedies of any Party.

15.3 Fees payable to Independent Certifier on termination

- (a) Upon termination of this deed under this clause 15 or of the appointment of the Independent Certifier for any reason whatsoever the Independent Certifier will be entitled (subject to set-offs which may be claimed by the Developer) to payment in accordance with this deed for Duties performed by the Independent Certifier in accordance with this deed up to the effective date of termination but the Independent Certifier will have no further Claim against the Principal Parties in relation to the termination and such payment will be the Independent Certifier's sole remedy and compensation for such termination.
- (b) Upon termination of this deed the Independent Certifier must refund to the Developer any component of the Fee paid to the Independent Certifier by the Developer for Duties not performed by the Independent Certifier.

15.4 Return of Records

- (a) On the earlier of the date of termination of the appointment of the Independent Certifier and the date of completion of the Independent Certifier Duties, the Independent Certifier must deliver to each of the Principal Parties a complete copy of all books, records, plans, specifications and other documents relating to the obligations, functions or duties of the Independent Certifier under this deed which are in its possession or under its control.
- (b) The Independent Certifier may keep for its own records a copy of any such books, records, plans, specifications, or other documents so delivered to the Principal Parties.
- (c) The Independent Certifier acknowledges that the Principal Parties have the right to use all such books, records, plans, specifications and other documents for any purposes in connection with the Project.

15.5 Reasonable assistance

Where the Principal Parties give a notice under clause 15.1 of termination of the Independent Certifier, the Independent Certifier must provide full assistance to the Principal Parties and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Duties with effect from the appointment of such replacement.

15.6 Termination without prejudice

Termination of the appointment of the Independent Certifier will be without prejudice to any claim which any of the Principal Parties may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

15.7 Survival

For the avoidance of doubt, this clause 15 will survive the termination of this deed under clause 15.1.

15.8 Rights upon termination

If the appointment of the Independent Certifier is terminated pursuant to clause 15.1(a), the parties' remedies, rights and liabilities shall be the same as they would have been under the law governing the deed had the Independent Certifier repudiated the deed and the Principal Parties elected to treat the deed as at an end and recover damages.

16. Confidentiality

16.1 Confidential Information

The Independent Certifier must not disclose any proprietary or confidential information relating to the Duties and/or the Project without the prior written consent of the Principal Parties, except as required by Law.

16.2 Publicity

The Independent Certifier must:

- (a) not issue any information, document, advertisement or article in respect of the Project for publication in any media;
- (b) not erect or make an advertisement on or in respect of the Project without the prior written consent of the Principal Parties; and
- (c) refer enquiries from the media concerning the Project to the Principal Parties.

16.3 Third parties

The Independent Certifier must ensure that any third party engaged by the Independent Certifier in accordance with clause 7.7 complies with this clause 16.

17. Notices

17.1 Form

- (a) Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be:
 - (i) in writing, signed by:
 - (A) with respect to the Principal Parties, an Authorised Officer of the sender; or
 - (B) with respect to the Independent Certifier, the Independent Certifier's Representative; and
 - (ii) marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified.

Landowner

Name: Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales

Address: 6 Parramatta Square, 10 Darcy Street, Parramatta NSW 2150

Email: [Insert]

For the attention of: [Insert]

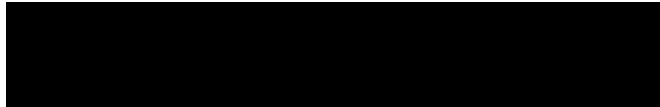
Developer

Name: MAH Harbour Drive Limited

Address: Level 7, 580 George Street, Sydney NSW 2000

For the attention of: General Manager/Company Secretary

Email:



Independent Certifier [Independent Certifier to insert details]

Name: [Insert]

Address: [Insert]

Email: [Insert]

For the attention of: [Insert]

17.2 Delivery

- (a) Notices, certificates, consents, approvals, waivers and other communications under this deed must be:
 - (i) left at the address referred to in clause 17.1;
 - (ii) sent by prepaid 'priority' post (or airmail, if appropriate) to the relevant address referred to in clause 17.1; or
 - (iii) for all other notices, sent by email to the email address in clause 17.1.
- (b) However, if the intended recipient has notified a changed postal address or changed email address, then the communication must be to that postal address or email address.

17.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

17.4 Receipt - postal

If sent by domestic 'priority' post, they are taken to be received 4 Business Days after posting (or 10 Business Days after posting if sent to or from a place outside Australia).

17.5 Receipt - email

If sent by email, they are taken to be received immediately once sent, unless a notification of delivery failure is received within 15 minutes of the email being sent.

17.6 Receipt - general

If notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

17.7 Validity

Notices are validly given by Landowner even if returned unclaimed or if the recipient has been wound up or is absent from the place the notice is delivered or sent to.

17.8 Waiver of notice period

Landowner may waive a period of notice required to be given by the Developer or the Independent Certifier under this deed.

18. General

18.1 Exercise of rights

Any Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

18.2 Partial exercise of rights

A single or partial exercise of a right, power or remedy by Landowner does not prevent a further exercise of that or an exercise of any other right, power or remedy.

18.3 Delay in exercising rights

Failure by any Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

18.4 Landowner not liable

Except to the extent expressly provided for in this deed, the Landowner is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, power or remedy.

18.5 Waiver and variation

A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.

18.6 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Developer or the Independent Certifier in connection with this deed with the result that the Landowner's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

18.7 Approvals and consent

The Landowner may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

18.8 Remedies cumulative

The rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this deed.

18.9 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties and survives expiry or termination of this deed. Except as otherwise provided for in this deed, it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this deed.

18.10 Further assurances

If asked by another party (acting reasonably), then a party must, at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind it and its successors under this deed; and
- (b) use its reasonable endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this deed.

18.11 Continuing breaches

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

18.12 Antecedent obligations

The expiry or termination of this deed does not affect the Developer's or the Independent Certifier's obligations:

- (a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to the Landowner to enable it to calculate those payments.

18.13 Confidentiality

- (a) All information provided under or in relation to the Project:
 - (i) by the Developer or the Independent Certifier to the Landowner; or
 - (ii) by the Landowner to the Developer or the Independent Certifier,and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person, except:
 - (iii) with the consent of the disclosing party;
 - (iv) if allowed or required by Law or required by any stock exchange;
 - (v) in connection with legal proceedings relating to the Project;
 - (vi) if the information is generally and publicly available (other than due to a breach of this clause 18.13 by the Landowner, the Developer or the Independent Certifier); or
 - (vii) to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed.
- (b) The recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and not disclosed it to any person.
- (c) Without limiting clauses 18.13(a) and 18.13(b), neither the Developer nor the Independent Certifier may issue a press or media release or make or cause to be published any public statements in relation to the Project without the prior written approval of the Landowner.

18.14 Severability

- (a) If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction:
 - (i) it is severed for that jurisdiction; and
 - (ii) the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.
- (b) This clause 18.14 has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

18.15 Entire agreement

This deed contains the entire agreement between the Parties concerning its subject matter and supersedes all prior agreements and understandings between the Parties in connection with the subject matter.

18.16 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

18.17 Governing Law, jurisdiction and service of process

This deed is governed by the law in force in New South Wales.

18.18 Jurisdiction

Each Party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 18.18(a).

18.19 Waiver

Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

18.20 Proportionate liability

- (a) The Parties agree that Part 4 of the *Civil Liability Act 2002* (NSW) does not apply.
- (b) The Parties agree that their rights, obligations and liabilities will be those which would exist if Part 4 of the *Civil Liability Act 2002* (NSW) did not apply.

18.21 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

18.22 Survival

This clause and clauses 1.5, 3.4, 9, 10.3, 12, 15.3, 15.4, 16 and 18.20 survive the termination or repudiation of this deed.

18.23 Attorneys

Each person who executes this deed on behalf of a Party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

18.24 Costs

Each Party will pay its own legal and other costs associated with the preparation, negotiation and execution of this deed.

18.25 No bias against drafter

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

18.26 Electronic Execution

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

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

Schedule 1 - Deed Particulars

Item No.	Item	Particular
1	Key Personnel: (clause 1.2)	[insert]
2	Senior Representative: (clause 1.2 and 13.3)	Landowner: [insert] Developer: General Manager, Housing Growth Independent Certifier: [insert]
3	The amount of professional indemnity insurance must not be less than: (clause 10.3(a))	

Schedule 2 - Fee

[insert amount of the Fee, including applicable milestone or recurring payments]

Schedule 3 - Duties

The General Duties set out in this schedule relate to the functions of the Independent Certifier under this deed, the PDD and other Transaction Documents. This schedule is an indicative, but not exhaustive or complete list of the Duties. To the extent of any discrepancy between this schedule and the documents listed above, the documents listed above will prevail.

Nothing in this schedule limits the obligations of the Independent Certifier under this deed.

1. Project Delivery Deed

Item No.	Function	Clause in PDD
1	Issue a Certificate of Practical Completion to which the Independent Certifier certifies to the Landowner and the Developer that Practical Completion has been achieved in respect of the Works and lists any minor defects and omissions in the Works which are identified during the inspection referred to in clause 25.2 of the PDD but which do not prevent the Works from achieving Practical Completion.	Clause 1.1 definition of Certificate of Practical Completion
2	Determine to their satisfaction that the Works have been completed or installed in accordance with the Agreed Development Consent, the Final Design Documentation and the obligations of the Developer under the PDD, except for minor omissions and minor defects (which do not prevent the Works from being reasonably capable of being used for their intended purpose and rectification of which will not prejudice the use of the Works or the Property for their intended purpose).	Clause 1.1 definition of Practical Completion (a)
3	Receive details of claimed extension of time from the Developer in respect of a Milestone, including: - the proposed number of days claimed; - when the cause of delay first arose; - the date the delay ceased; and - the date that the Developer ought reasonably to have become aware of the cause of delay ceasing.	Clause 23.3
4	Determine whether the Developer is or is likely to be delayed in achieving an Milestone by the Milestone Date as a result of one of the following reasons listed in clause 23.2 of the PDD: - a Force Majeure Event occurs; - delays caused by any Authority in granting an Approval except to the extent that the delay is caused or contributed to by the Developer's non-compliance with clause 10.4(a) of the PDD or because the Developer has made any modifications to the Agreed Development Consent; - an act or omission of the Landowner or the Landowner's Associates resulting in a breach of the PDD by the Landowner or because of the wrongful or reckless act or omission of the Landowner or the Landowner's Associates; or - any other cause agreed by the parties from time to time. In making the above determination, the Independent Certifier may: - take into account whether the Developer has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay (provided that the Developer is not obliged to incur any Costs in doing so); and - not take into account whether the Developer can achieve the Milestone by the Milestone Date without an extension of time. Promptly notify the Developer and Landowner of the Independent Certifier's determination about whether the relevant Milestone Date is extended, and if so, by what period.	Item 21 of the Reference Schedule and clause 23.2(a), (b),(c) and (d) and clause 23.5

Item No.	Function	Clause in PDD
5	Conduct a joint inspection of the Works with the Developer and Landowner after 2 Business Days after service of notice by the Developer to the Landowner in accordance with clause 25.1 of the PDD.	Item 21 of the Reference Schedule and clause 25.2(a)
6	Issue a Certificate of Practical Completion in respect of the Works, or the written reasons for not issuing the certificate within 5 Business Days of the Developer's request.	Clauses 25.2(b) and 25.3
7	If the Independent Certifier determines that the Certificate of Practical Completion is not to be issued, the Developer will procure that not less than 2 Business Days' notice is given to the Landowner and the Independent Certifier of the intention of re-inspection of the Works, jointly re-inspect the Works with the Developer and Landowner, with a view of issuing the Certificate of Practical Completion. This process may be repeated until the Certificate of Practical of Completion is issued.	Clause 25.2(c)
8	Receiving notices with regard to the identification of Defects in the Social Housing Works and/or the Shared Services Works during the Defects Period.	Item 21 of the Reference Schedule and clause 26.1
9	Preparing and issuing an opinion confirming that there is no reasonable likelihood that the Developer will satisfy one or more of the Minimum Requirements by the Sunset Date, or achieve one or more of the Milestones by the relevant Milestone Date.	Item 21 of the Reference Schedule and clause 28.9

2. Builder's Side Deed

Defined terms used in this table have its meaning given to it in the BSD.

Item No.	Function	Clause in BSD
1	Receiving a statutory declaration from the Builder each time a claim for payment under the Building Contract while a Default subsists or during a Step-in Period.	Clause 3.1
2	Determine whether the Works Materials have not been unreasonably ordered and delivered in advance of the requirements under the construction program and project management plans under the Building Contract to the Independent Certifier's satisfaction.	Clause 3.8
3	If required under the Building Contract, in relation to Off-Site Materials, determine whether: - the Builder has fully and finally paid for the Off-Site Materials and title to the Off-Site Materials has passed to the Builder, free from any Security Interest; - the Off-Site Materials have been securely stored, labelled as the property of the Developer and are adequately protected and insured (including for transport insurance) in the joint names of the Developer and the Builder; - without limiting paragraph (B) above, the Builder has perfected, for the purposes of the PPSA, any Security Interest it holds in the Off-Site Materials; and - the Builder has provided to the Landowner (whether obtained by the Builder or a sub-contractor or supplier under a Works Contract) an unconditional, on- demand bank guarantee in favour of the Developer and the Landowner jointly (in form and substance, and issued by a financial institution, satisfactory to the Landowner) for an amount not less than the value of the Off- Site Materials.	Clause 3.8
4	Attend and participate in each:	Clause 3.10

Item No.	Function	Clause in BSD
	- project control group meeting in relation to the Works contemplated under the Building Contract; - dispute resolution procedure contemplated by the Building Contract; and - other meeting in relation to the Works that the Developer is entitled to attend.	

Signing page

EXECUTED as a deed.

Landowner

Signed, sealed and delivered by the Minister administering the Housing Act 2001 for and on behalf of the State of New South Wales by its duly authorised delegate, and I hereby certify that I have no notice of revocation of such delegation, in the presence of:

Signature of witness	Signature of delegate
Name of witness (print)	Name of delegate (print)
Name of witness (print)	Office held

Developer

Executed by MAH Harbour Drive Limited in accordance with Section 127 of the *Corporations Act 2001*

Signature of director	Signature of director/company secretary (Please delete as applicable)
Name of director (print)	Name of director/company secretary (print)

Independent Certifier

Executed by [Name of company and ABN] in
accordance with Section 127 of the *Corporations
Act 2001*

Signature of director

Name of director (print)

Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)