WAVERLEY COUNCIL

(Council)

AND

LINDSAY BENNELONG DEVELOPMENTS PTY LTD
(ACN 002 133 931)

(Developer)

AND

BONDI LAND PTY LIMITED
(ACN 615 618 203)

(Owner)

PLANNING AGREEMENT

(Development Contribution)

WAVERLEY COUNCIL
Council Chambers
Cnr Bondi Road & Paul Street
BONDI JUNCTION NSW 2022
DX 12006 BONDI JUNCTION
Phone: 02 9083 8000
Facsimile: 02 9387 1820

PLANNING AGREEMENT NO. D20/21117

Section 7.4 of the Environmental Planning and Assessment Act, 1979

THIS AGREEMENT is made on 2020

PARTIES

WAVERLEY COUNCIL of Cnr Paul Street and Bondi Road, Bondi Junction NSW 2022 ABN 12 502 583 608 ("**Council**")

LINDSAY BENNELONG DEVELOPMENTS PTY LTD of Ground Floor, 21 – 23 Solent Circuit, Baulkham Hills NSW 2153 ACN 002 133 931 ("**Developer**")

BONDI LAND PTY LIMITED of Ground Floor, 21 – 23 Solent Circuit, Baulkham Hills NSW 2153 ACN 615 618 203 ("**Owner**")

BACKGROUND/RECITAL

A. Bondi Land Pty Limited is the Owner of the Land. The Developer is the developer of the Land and the applicant in the Development Application.

B. The Council is the local authority constituted under the Local Government Act 1993 and the planning and consent authority constituted under the Act.

C. On 23 November 2017 the Developer caused a development application to be made to Council for development consent. Consent was granted on 13 December 2018. In accordance with the offer made by the Developer the consent contained a condition for the owner/applicant to enter into a Planning Agreement and amongst other things pay a monetary contribution amount of $5,164,236.85.

D. The Developer subsequently sought to modify development application DA 498/2017 in relation to timing for entering into the Planning Agreement and provision of security. Consent was granted on 19 March 2019 (DA 498/2017/A).

E. The Developer sought to further modify development application DA 498/2017/A consistent with an updated offer to Council to enter into a Planning Agreement to make the Development Contribution (being an in kind contribution in lieu of a cash contribution) towards a public purpose in accordance with Council's Planning Agreement Policy and

Development Contributions Plan if the modified Development Consent was granted.

F. The further modified Development Consent referred to in recital E was granted on 25 October 2019.

G. This Agreement is consistent with the Developer's offer referred to in Recital E.

OPERATIVE PROVISIONS:

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a planning agreement governed by Section 7.4 and Subdivision 2 of Division 7.1 of Part 7 of the Act.

2 APPLICATION OF THIS AGREEMENT

This Agreement applies to the Land and to the Development proposed in the Development Application, as may be modified.

3 OPERATION OF THIS AGREEMENT

This Agreement shall take effect on and from the later of the Development Consent and the date of this Agreement. The parties must execute and enter into this Agreement prior to a Construction Certificate for works above ground level (as determined at the time of the Development Consent) issuing for the Development.

4 DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Agreement unless the context otherwise requires:

"Act" means the *Environmental Planning and Assessment Act* 1979 (NSW) as modified;

"Agreement" means this agreement;

"Bank Guarantee" means an irrevocable and unconditional undertaking by a trading bank approved by the Council or an unconditional insurance bond with an insurer approved by Council in the amount of $5,809,592.41 without an expiry or end date and containing terms and conditions reasonably acceptable to Council and in accordance with clause 9 of this Agreement;

"Building" means the building the subject of the Development Application;

"Business Day" means a day that is not a Saturday, Sunday or public holiday, on which banks are open for general services in Sydney, New South Wales;

"Caveat Consent Form" means an irrevocable authority to Waverley Council registering and maintaining a caveat on the Land, in a form acceptable to Council and executed by the

Owner of the Land, or such other form of Owner's consent to caveat as may be required by Council;

"Certifying Authority" means any accredited private certifier including where appropriate, a Principal Certifying Authority (PCA) appointed or to be appointed to certify the Development or any aspect of it;

"Council" means Waverley Council and herein includes any local government authority with which that Waverley Council may merge or any other local government authority responsible for a local government area that the Land is located within;

"Commercial Strata Lots" means the commercial lots (including any garage, car space, storage area and associated common space) identified in Item 5 of Schedule 1 to be transferred to Council together with Exclusive Use Rights as part of the Development Contribution;

"Completion Notice" means the notice issued by Council upon completion of the Works referred to in clause 6 of Schedule 2;

"Construction Certificate" means any construction certificate as referred to in s 6.4 of the Act in respect of the Development Consent;

"Construction Terms" means the terms set out in Schedule 2;

"Defect" has the same meaning as defined in Schedule 2;

"Defect Liability Period" has the same meaning as defined in Schedule 2;

"Development" means the development the subject of the Development Application described in item 4 of Schedule 1;

"Development Application" means the development application described in item 3 of Schedule 1;

"Development Consent" means the development consent dated 25 October 2019, as may be modified, granted in respect of the Development Application;

"Development Contribution" means the contribution referred to in item 5 of Schedule 1 and Schedule 2 and includes the transfer of the Commercial Strata Lots and Fit-Out Works in accordance with this Agreement;

"Development Contribution Date" means the time the Development Contribution is to be delivered as specified in item 7 of Schedule 1;

"Exclusive Use Rights" means the right of exclusive use of Council as the owner of the Commercial Strata Lots to use the areas marked as "common" on the Preliminary Floor Plans pursuant to a binding registered by-law;

"Fit-Out Works" has the same meaning as defined in Schedule 2;

"Floor Plans" has the same meaning as defined in Schedule 2;

"GST" has the same meaning as in the GST Law;

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

"Land" means the land described in item 2 of Schedule 1 and all lots resulting from any

subdivision or consolidation or part thereof;

"Occupation Certificate" means any occupation certificate as referred to in s 6.4 of the Act in respect of the Development Consent;

"Owner" means the registered proprietor of the Land, Bondi Land Pty Limited;

"Party" means a party to this Agreement including their successors and assigns;

"Preliminary Floor Plans" has the same meaning as defined in Schedule 2;

"Public Purpose" for the purpose of this Agreement means the public purpose described in item 6 of Schedule 1;

"Rectification Notice" has the same meaning as defined in Schedule 2;

"Registration Application" means an application for registration of this Agreement as a planning agreement on the title of the Land pursuant to Section 7.6 of the Act in a form approved by the Registrar General;

"Schedule 1" means the schedule titled 'Schedule 1';

"Schedule 2" means the schedule titled 'Schedule 2';

"Schedule of Finishes" has the same meaning as defined in Schedule 2;

"Strata Certificate" means approval by Council or a Certifying Authority for the strata subdivision of the Building in accordance with the Strata Plan;

"Strata Plan" means the strata plan which creates a strata scheme in respect of the Building and separate titles to the Commercial Strata Lots;

"Works" has the same meaning as defined in Schedule 2.

4.2 Interpretation

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

(a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement;

(b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney, New South Wales;

(c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day;

(d) A reference in this Agreement to dollars or $ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;

(e) A reference in this Agreement to any law, legislation or legislative provision

includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;

(f) A reference in this Agreement to any agreement, Agreement or document is to that agreement, Agreement or document as amended, novated, supplemented or replaced;

(g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;

(h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;

(i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;

(j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders;

(k) References to the word 'include' or 'including' are to be construed without limitation;

(l) A reference to this Agreement includes the agreement recorded in this Agreement;

(m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns; and

(n) Any schedules and attachments form part of this Agreement.

5 DEVELOPMENT CONTRIBUTION TO BE MADE UNDER THIS AGREEMENT

5.1 The Developer agrees to make/procure, and the Council agrees to accept, the Development Contribution to be applied for the Public Purpose.

5.2 The Developer must use all reasonable endeavours to commence, progress and complete the Development as expeditiously as reasonably practicable and, in any event, so as to deliver the Development Contribution by the Development Contribution Date.

5.3 The delivery of the Development Contribution is to take the form of a dedication by way of

transfer and delivery of the Commercial Strata Lots (and complete Fit-Out Works) to the Council at no cost to Council (that is, for no monetary consideration payable by the Council in respect of the transfer of the Commercial Strata Lots to the Council and free of any rates, levies and other outgoings to the date of transfer) and free of all encumbrances. For the avoidance of doubt, the Council is responsible for the payment of any stamp duty in respect of the transfer and legal fees beyond those contemplated in clause 15 (if any).

Transfer of Commercial Strata Lots

5.4 The Developer agrees to procure and the Owner will transfer the Commercial Strata Lots to the Council at no cost to Council as set out in clause 5.3 and free of all encumbrances and the Council agrees to accept the transfer of the Commercial Strata Lots to be used by the Council for the Public Purpose.

5.5 The Developer will cause the Building and the Commercial Strata Lots to be constructed in a proper and workmanlike manner in accordance with the Development Consent, Floor Plans and the Construction Terms referred to in Schedule 2 hereof and this clause 5.

5.6 The Developer will ensure that the Commercial Strata Lots and Fit-out Works are finished in a proper and workmanlike manner in accordance with the Schedule of Finishes and to the same standard as the other commercial units in the Building and that the floor plan of the Commercial Strata Lots is identical or substantially similar to the Floor Plans.

5.7 The Developer shall at its own expense comply with its obligation as to remedying any Defect in the Commercial Strata Lots in accordance with Schedule 2.

5.8 On or before the date of this Agreement, the Developer has provided the Council with copies of the proposed strata plan and by-laws for the Development including but not limited to an Exclusive Use Rights by-law. The Council acknowledges that the strata plan and by-laws are draft only and are subject to amendment before they are finalised (provided such amendments do not materially detrimentally affect the Commercial Strata Lots).

Strata Subdivision

5.9 The Developer will immediately notify Council in writing upon the issue of the Strata Certificate.

5.10 The Developer will immediately notify Council in writing of:

(a) the lodgement of the Strata Plan with NSW Land Registry Services (including the strata plan number allocated to the Strata Plan upon lodgement); and

(b) the registration of the Strata Plan.

Delivery of Development Contribution

5.11 The Developer must promptly after receiving the Occupation Certificate deliver to Council

a certified true copy of the Occupation Certificate for all development and Works upon the Land including the Fit-out Works.

5.12 On the Development Contribution Date the Developer must transfer and deliver to Council the Commercial Strata Lots (and complete Fit-Out Works) free of any encumbrances in accordance with this Agreement.

5.13 Prior to the delivery of the Development Contribution in accordance with 5.12, the Developer must deliver to Council:

(a) a current clear Land Tax Certificates from Revenue NSW in respect to the Commercial Strata Lots;

(b) a certificate of currency of appropriate insurances for the Building and Land; and

(c) evidence all outgoings including rates, have been paid to the date of transfer.

6 APPLICATION OF THE DEVELOPMENT CONTRIBUTION

6.1 The Council will apply the Development Contribution towards the Public Purpose as soon as practicable.

7 APPLICATION OF S7.11 AND S7.12 OF THE ACT TO THE DEVELOPMENT

7.1 This Agreement wholly excludes the application of Sections 7.11 and 7.24 of the Act.

7.2 The Development Contribution includes the amount levied in relation to the Development under Section 7.12 of the Act in the amount of $645,355.56.

8 REGISTRATION OF THIS AGREEMENT

8.1 The Parties agree this Agreement is to be registered by the Registrar-General as provided for in section 7.6 of the Act.

8.2 The Developer and Owner warrant that they have done everything necessary to enable this Agreement to be registered under section 7.6 of the Act.

8.3 Without limiting clause 8.2, the Developer and Owner warrant that they have obtained the express written consent to the registration of this Agreement under section 7.6 of the Act from:

(a) if this Agreement relates to land under the *Real Property Act 1900*, each person who has an estate or interest in the Land registered under that Act; or

(b) if this Agreement relates to land not under the *Real Property Act 1900*, each person who is seized or in possessed of an estate or interest in the Land.

8.4 As soon as practicable after entering into this Agreement and in any event prior to the issue of a Construction Certificate for works above ground level (current at the date of this Agreement), the Developer and Owner will at their cost arrange and effect registration of this Agreement under s7.6 upon the title to the Land and as soon as practicable will:

(a) deliver to the Council the Registration Application in registrable form noting the Council as applicant and executed by the Owner and any other person the subject of the warranty in clause 8.3;

(b) lodge or cause to be lodged the title deed with NSW Land Registry Services and advise Council of the production number;

(c) provide the Council with a cheque in favour of NSW Land Registry Services, NSW for the registration fees for registration of this Agreement; and

(d) provide the Council with a cheque in favour of the Council for its reasonable costs, expenses and fees incurred or to be incurred in connection with the preparation of this Agreement and any documents, form or instrument created or to be created in accordance with the provisions of this Agreement.

(e) and take any other necessary action so as to ensure this Agreement is registered on the title to the Land prior to the issue of any Construction Certificate.

8.5 Upon compliance with clause 8.4 by the Developer the Council will promptly lodge the Registration Application with the Registrar General.

8.6 The Parties will co-operate with each other to ensure that the Agreement is registered by the Registrar General.

8.7 Simultaneously with the delivery of the Development Contribution in accordance with clause 5 and Schedule 2, the Council must provide a duly executed LRS Request form (or, if required by the LRS, separate Request forms in respect of each lot in the Development) in registrable form for the removal of the registration of this Agreement from the tile to the Land, provided the Developer pays all reasonable costs, expenses and fees of the Council relating to such removal.

8.8 Upon registration of this Agreement by the Registrar General, this Agreement is binding on, and is enforceable against the owner of the Land from time to time as if each owner for the time being had entered into this Agreement.

9 BANK GUARANTEE

9.1 Provision of Bank Guarantee

(a) Prior to the issue of a Construction Certificate for works above ground level (as determined at the time of the Development Consent), the Developer must deliver to the Council a Bank Guarantee, which must be:

(i) in a form and from an institution approved by the Council;

(ii) irrevocable and unconditional;

(iii) with no expiry date;

(iv) issued in favour of the Council;

(v) in the amount of $5,809,592.41;

(vi) drafted to cover all of the Developer's obligations under this Agreement; and

(vii) on the terms otherwise satisfactory to the Council.

(b) The Developer acknowledges that the Council enters into this Agreement in consideration of the Developer providing the Bank Guarantee as a security for the performance of all of the Developer's obligations under this Agreement, including without limitation the delivery of the Development Contribution to Council in accordance with this Agreement.

9.2 **Calling on Bank Guarantee**

(a) The Council may call on the Bank Guarantee in the event that the Developer:

(i) fails to deliver any part of the Development Contribution in accordance with this Agreement and the Schedules to it, or any other amount payable under this Agreement by its due date for payment; or

(ii) breaches any other term or condition of this Agreement,

and fails to remedy the relevant failure or breach within 7 days after the Council's notice.

(b) If the Council calls on the Bank Guarantee as a result of the Developer's breach or failure under this Agreement as referred to in 9.2(a), then the Council will be entitled to claim any loss or damages sustained as a result of the Developer or Owner's breach or failure under this Agreement, on the Bank Guarantee without further notice.

9.3 **Return of Bank Guarantee**

Subject to clause 9.2, provided that the Developer has complied with its obligations under this Agreement to deliver the Development Contribution and payment of any outstanding monetary amounts payable under this Agreement, the Council will return the Bank Guarantee to the Developer upon delivery of the Development Contribution in accordance with this Agreement.

10 REVIEW OF THE AGREEMENT

Any amendment or review of this Agreement shall be by agreement in writing and in compliance with section 7.5 of the Act.

11. DISPUTE RESOLUTION

11.1 **Notice of dispute**

If a Party claims that a dispute has arisen under this Agreement ("Claimant"), it must give written notice to the other Party ("Respondent") stating the matters in dispute and

designating as its representative a person to negotiate the dispute ("Claim Notice").
No Party may start Court proceedings (except for proceedings seeking interlocutory relief) in respect of a dispute unless it has first complied with this clause.

11.2 **Response to notice**

Within ten business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

11.3 The nominated representative must:

(i) meet to discuss the matter in good faith within five business days after services by the Respondent of notice of its representatives; and

(ii) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

11.4 **Further notice if not settled**

If the dispute is not resolved within 15 business days after the nominated representatives have met, either Party may give to the other a written notice calling for determination of the dispute ("Dispute Notice") by mediation under clause 11.5 or by expert determination under clause 11.6.

11.5 **Mediation**

If a Party gives a Dispute Notice calling for the dispute to be mediated:

(a) the Parties must agree to the terms of reference of the mediation within five business days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules and the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);

(b) the mediator will be agreed between the Parties, or failing agreement within five business days of receipt of the Dispute Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

(c) the mediator appointed pursuant to this Clause 11.5 must;

(i) have reasonable qualifications and practical experience in the area of disputes; and

(ii) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose any such interest or duty before his appointment;

(d) the mediator shall be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;

(e) the Parties must within five business days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;

(f) the Parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and

(g) in relation to costs and expenses:

(i) each Party will bear their own professional and expert costs incurred in connection with the mediation; and

(ii) the cost for the mediator will be shared equally by the Parties unless the mediator determines a Party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation to be borne by that Party.

11.6 **Expert Determination**

If the dispute is not resolved under clause 11.3 or 11.5 the dispute may, by agreement between the Parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:

(a) the dispute must be determined by an independent expert in the relevant field:

(i) agreed upon and appointed jointly by the Council and the Developer; or

(ii) in the event that no agreement is reached or appointment made within 30 business days, appointed on application of a Party by the then current President of the Law Society of New South Wales;

(b) the expert must be appointed in writing and terms of the appointment must not be inconsistent with this clause;

(c) the determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and containing reasons for the determination;

(d) the expert will determine the rules of the conduct for the process, but must conduct the process in accordance with the rules of natural justice;

(e) each Party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and

(f) any determination made by an expert pursuant to this clause is final and binding upon the Parties except where the determination is in respect of, or relates to, termination or purported termination of this Agreement by any Party, in which event the expert is deemed to be giving a non-binding appraisal and any Party may commence litigation in relation to the dispute if it has not been resolved within 20 business days of the expert giving his or her decision.

11.7 **Litigation**

If the dispute is not finally resolved in accordance with this clause 11, either Party is at liberty to litigate the dispute.

11.8 **Continue to Perform Obligations**

Each Party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

12. ENFORCEMENT

12.1 Nothing in this Agreement prevents the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement (including the breach of this Agreement by the Developer) or any matter to which this Agreement relates.

12.2 The Developer and Owner acknowledge and agree that:

(a) the Land is charged with the delivery of the Development Contribution in full to Council;

(b) Council has a caveatable interest in the Land from the later of the date of the Development Consent and this Agreement until the Development Contribution is delivered in full to Council;

(c) Council has the right to lodge and maintain a caveat against the title to the Land to notify of and protect its interest created by this Agreement (including the charge in (a), until the Development Contribution is delivered in full to Council; and

(d) upon entering into this Agreement, the Developer and Owner shall provide Council with the Caveat Consent Form.

12.3 The Council must promptly provide caveator consent to the registration of any plan or dealing in respect of the Land that is permitted under this Agreement and is not inconsistent with the Council's right to receive the Development Contribution under this Agreement. The Developer must pay the Council's reasonable costs in relation to provision of caveators consent.

12.4 The Council must, simultaneously with delivery of the Development Contribution in accordance with clause 5 and Schedule 2, remove any caveat lodged by or on behalf of the Council against the Land. The Developer must pay the Council's reasonable costs in relation to the withdrawal of caveat.

13. NOTICES

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

(a) delivered or posted to that Party at its address set out below in item 8 of the Schedule;

(b) faxed to that Party at its fax number set out below in item 8 of the Schedule;

(c) emailed to that Party at its email address set out below in item 8 of the Schedule.

13.2 If a Party gives the other Party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

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

(a) if it is delivered, when it is left at the relevant address.

(b) if it is sent by post, 2 business days after it is posted.

(c) if it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

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

14 APPROVALS AND CONSENT

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

15 ASSIGNMENT AND DEALINGS

15.1 Until the Development Contribution is delivered in full, the Developer and Owner may not sell or transfer the Land or assign, or novate this Agreement, or attempt or purport to do so, without the Council's prior written consent. However, the Developer and Owner may enter into contracts for sale and put and call options in respect of lots within the Development.

15.2 For the avoidance of doubt, this Agreement does not prevent or restrict:

a. the Developer or the Owner charging, recharging, mortgaging or remortgaging the Land or any part of it or their respective rights under this Agreement; or

b. the exercise of the rights of any chargee or mortgagee under any charge or mortgage over the Land or any part of it or over this Agreement (including the exercise by any such chargee or mortgagee of its power of sale or any other enforcement powers under any such charge or mortgage)

PROVIDED that the Council's rights herein including as to delivery of the Development Contribution in accordance with this Agreement are not affected and this Agreement and the conditions of Development Consent that give rise to this Agreement continue to run with the

Land and are enforceable against the owner of the Land from time to time, their transferees, successors, assigns and every person who is entitled to an estate or interest in the possession of the Land or any part of it including any mortgagee in possession.

15.3 Without limiting clause 12.3 and, subject to clause 15.2, the Council must promptly provide caveator consent to the registration of a dealing in respect of any existing or future mortgage or charge over the Land or any part of it.

16 COSTS AND DUTY

16.1 Council's reasonable costs of and incidental to the preparation and execution of this Agreement and any related documents and registration of same shall be borne by the Developer. The Developer shall be responsible to pay its own costs arising from this Agreement or its preparation.

16.2 The Council must pay all duty (including all fines and penalties except those arising from the default of another party) in respect of this Agreement and the transfer of the Development Contribution to the Council.

17 ENTIRE AGREEMENT

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

18 FURTHER ACTS

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

19 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

20 JOINT AND INDIVIDUAL LIABILITY AND BENEFITS

Except as otherwise set out in this Agreement, any agreement, covenant, representation

or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

21 NON FETTER

The Developer acknowledges and agrees that:

(a) in addition to its obligations under this Agreement the Council is also responsible for the conduct and administration of local government in the Waverley Local Government Area;

(b) this Agreement in no way affects Council's statutory obligations, functions or powers, including without limitation, its obligations, functions or powers in respect of the Development Application, Development Consent and any other approvals required in respect of the works to be carried out under the Development Consent;

(c) nothing which the Council does or fails to do under this Agreement will limit or otherwise affect the Developer's obligations under the Development Consent; and

(d) nothing which the Council does, fails to do or purports to do in performing the Council's statutory functions or powers will constitute or amount to a breach of this Agreement.

22 REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

23 SEVERABILITY

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

24 MODIFICATION

No modification of this Agreement will be of any force or effect unless it is in writing and

signed by the Parties to this Agreement.

25 WAIVER

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

26 GOODS & SERVICES TAX

26.1 The Parties agree and acknowledge, all amounts payable by one party to the other party in relation to a supply under this Agreement have been calculated exclusive of GST which may be imposed on the supply.

26.2 If any supply made under this Agreement is, or becomes, subject to GST, the party to whom the supply is made ("**Recipient**") must pay to the party making the supply ("**Supplier**"), as consideration, in addition to any consideration payable or to be provided elsewhere in this Agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

26.3 Any amount in respect of GST payable under clause 26.2 must be paid to the Supplier immediately on receipt of the Valid Tax Invoice.

26.4 If any party is required to reimburse or indemnify the other party for a cost or expense ("**Cost**") incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred, less the amount of any credit for, or refund of, GST, which the party incurring the Cost is entitled to claim in respect of the Cost.

27 EXECUTION IN TRIPLICATE

The Parties shall execute this Agreement in triplicate so as to provide one original signed by both parties and a further copy for registration of the Agreement under s7.6 of the *Environmental Planning and Assessment Act*. This Agreement will be dated on the day of execution by all Parties.

SCHEDULE 1

Item Number		Particulars/Description
1	Developer	Lindsay Bennelong Developments Pty Ltd (ACN 141 697 912)
2	Land	16 Spring Street, Bondi Junction – Lot 3 DP 975587 18 Spring Street, Bondi Junction – Lot 4 DP 975587 Ground floor shop, 20 Spring Street, Bondi Junction – Lot 1 SP31260 2/20 Spring Street, Bondi Junction – Lot 2 SP31260 Common Property, 20 Spring Street, Bondi Junction – CP/SP31260 22 Spring Street, Bondi Junction – Lot B DP401739 87 Oxford Street, Bondi Junction – Lot 1 DP 975587 89 Oxford Street, Bondi Junction – Lot 9 DP 656476 91 Oxford Street, Bondi Junction – Lot A DP 312346 93 Oxford Street, Bondi Junction – Lot 11 Section S DP 145 95-99 Oxford Street, Bondi Junction – Lot A DP 401739
3	Development Application	DA 498/2017/B and DA 498/2017/C
4	Development (description)	The demolition of existing structures; construction of a new 14 storey mixed use building comprising residential apartments, retail and commercial premises, and three basement levels, or as modified.

5	Development Contribution	Transfer land which incorporates floor space as identified in the Preliminary Floor Plans (SK1.400 dated 13 May 2019) being 505m2 on the First Floor comprising commercial tenancies 1,2,4,5 and 6 and associated common space (Commercial Strata Lots) and Fit-out Works
6	Public Purpose	In part, a multi-purpose community hub and in part for the funding of recurrent expenditure relating to the provision of affordable housing under Waverley's Affordable Housing Program (or such other Council program or plan of action for the purposes of providing affordable housing, or if none a similar community purpose), in perpetuity. The said funding of recurrent expenditure is raised through revenue derived from leasing the Commercial Strata Lots.
7	Development Contribution Date	Within fourteen (14) days of the later of registration of the Strata Plan and delivery of the Occupation Certificate in accordance with clause 5.10 and prior to or simultaneous with the first settlement of any other lot(s) within the Development.
8	Developer Address	Ground Floor, 21 – 23 Solent Circuit, BAULKHAM HILLS NSW 2153
	Developer Fax	(02) 9841 0412
	Developer Email	leigh@bennelong.com
	Council Address	Corner Paul Street and Bondi Road, BONDI JUNCTION NSW 2022
	Council Fax	(02) 9387 1820
	Council Email	info@waverley.nsw.gov.au

SCHEDULE 2

CONSTRUCTION TERMS

---

1. Interpretation

1.1 For the purposes of this Schedule 2, the defined terms in clause 4.1 and the Interpretation in clause 4.2 of this Agreement will apply, unless a contrary intention is indicated:

Builder means any person or entity contracted under the Construction Contract to carry out Works relating to the Development upon the Land.

Construction Contract means the contract to carry out all Works.

Defect means anything that materially adversely affects the appearance, structural integrity, functionality or use or enjoyment of the Commercial Strata Lots or Fit-out Works or any part thereof including but not limited to defects caused by faulty materials or faulty workmanship (other than minor settlement cracks and minor shrinkage).

Defect Liability Period means the period of 12 months commencing on the day immediately after the title of the Commercial Strata Lots are transferred to Council in accordance with the provisions of this Agreement.

Fit-out Works means the fit-out of the Commercial Strata Lots to be transferred to Council in accordance with the Floor Plans and Schedule of Finishes which have been approved by Council, completed to the satisfaction of Council acting reasonably.

Floor Plans means the final floor plan for the Commercial Strata Lots and Fit-out Works with specifications approved by Council.

Preliminary Floor Plans means preliminary floor plans for the Commercial Strata Lots and Fit-out Works with specifications approved by Council and attached hereto and marked A.

Preliminary Schedule of Finishes means the preliminary finishes for the Fit-out Works as approved by Council and attached hereto and marked B.

Schedule of Finishes means the final finishes for the Fit-out Works as approved by Council.

Rectification Notice means a notice in writing from Council to the Developer:

(a) identifying the nature and extent of a Defect;

(b) specifying the works or actions that are required to rectify the Defect; and

(c) specifying the date by which or the period within which (being reasonable in all the circumstances) the Defect is to be rectified.

Works means the any building, engineering or construction work in, on, over or under the Land necessary to construct the Building and Commercial Strata Lots including the Fit-Out Works.

2. Requirements of authorities and approvals

2.1 These Construction Terms must be read and construed subject to:

(a) any requirements or conditions of the Development Consent; and

(b) the requirements of and conditions imposed by all relevant authorities and all laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any approvals in order to carry out the obligations under this Agreement, then the Developer will acquire all approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this Agreement are carried out:

(a) in accordance with the Development Consent for the Works and all approvals and requirements of all laws, including without limitation, work health and safety legislation; and

(b) in good and workman like manner and so that they are diligently progressed until completion.

3. Cost of Works

3.1 All cost of the Works including any rectification works necessary must be borne by the Developer.

4. Project Management and Builder Engagement

4.1 The Developer will be responsible for managing the Works.

4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:

(a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and

(b) to invite a Council representative to be present at on-site meetings relating to the Commercial Strata Lots and Fit-out Works.

5. Floor Plans and Schedule of Finishes

5.1 The parties acknowledge that as at the date of entering into this Agreement the Preliminary Floor Plans and Preliminary Schedule of Finishes whilst not in final form, are the most detailed and accurate available.

5.2 The Developer agrees that it will consult with Council promptly and in good faith in respect to updating the Preliminary Floor Plans and Preliminary Schedule of Finishes for the purposes of creating the final Floor Plans and Schedule of Finishes to the satisfaction of Council.

5.3 The Council shall be entitled to request reasonable amendments to the Preliminary Floor Plans and Preliminary Schedule of Finishes prior to finalisation.

5.4 The final Floor Plans and Schedule of Finishes must:

(a) be in accordance with the Development Consent, all approvals and requirements

of all laws; and

(b) be in line with the Developer's Trade Break Down dated 14 May 2019 and Fitout Costplan dated 14 May 2019 approved by to Council for the purposes of this Agreement.

6. Carrying out of Works

6.1 The Developer must keep the Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

6.2 Without limiting any other provision of this Agreement, the Developer must ensure all Works are carried out in accordance with the Floor Plans, Schedule of Finishes and to the satisfaction of Council, acting reasonably.

6.3 Council shall have access to the Commercial Strata Lots during construction of Works at all times upon 5 days written notice to the Developer to inspect their progress and ensure compliance with this Agreement.

6.4 Council may acting reasonably and in accordance with Australian construction standards, once before the construction of the Works is complete, after an inspection under clause 6.3, give the Developer a written direction to rectify or repair to the reasonable satisfaction of Council any specified part of the Commercial Strata Lots and Fit-out Works due to any Defect or non-compliance with the Developer's obligations herein that renders any part of the Commercial Strata Lots or the Fit-out Works unable to be legally occupied. Such direction will include an itemised list of the works required to rectify or repair the Commercial Strata Lots and Fit-out Works. If the Developer, acting reasonably, believes that any of the rectification works itemised in the direction under this clause are not necessary or appropriate to render the relevant part of the Commercial Strata Lots or the Fit-out Works able to be legally occupied, the Developer must provide the Council with written reasons for the Developer's belief within 5 business days of receipt of the written direction.

6.5 The Developer, at its own cost, is to promptly comply with any reasonable direction referred to in clause 6.4.

6.6 The Developer undertakes the Works entirely at its own risk.

6.7 Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder and/or the Developer as necessary effects and the Developer must produce evidence to the Council of, the following insurances issued by an insurer approved by Council:

(a) construction work insurance for at least the value of the Works;

(b) public liability insurance for at least $20 million; and

(c) workers compensation insurance as required by law.

AND all relevant insurances shall be maintained until the Council has issued a

Completion Notice in accordance with clause 7 and transfer of the Commercial Strata Lots and Fit-out Works in accordance with this Agreement has been effected. Notwithstanding this, such insurances must be continue so as to cover the rectification works during the Defect Liability Period.

7. Completion of the Commercial Strata Lots and Fit-out Works

7.1 The Developer is to give written notice to Council of the date on which it considers has completed all Works including the Fit-out Works required to be carried out under this Agreement. Council will then inspect the Works by arrangement with the Developer as soon as practicable.

7.2 Completion of the Commercial Strata Lots and Fit-out Works required to be carried out by the Developer under this Agreement and transferred to Council, are only complete for the purposes of this Agreement when Council, acting reasonably, gives a written notice to the Developer to that effect ('Completion Notice'). Until such time as the Completion Notice is provided and the transfer of the Commercial Strata Lots and Fit-out Works to Council has been effected, the Developer shall be obliged to maintain all relevant insurances.

7.3 Notwithstanding any other provision herein, Council is not required to give a Completion Notice to the Developer unless:

(a) an Occupation Certificate is provided to Council in respect of the Building including the Commercial Strata Lots and the Fit-out Works;

(b) the Developer has furnished to the Council a certificate by a suitably qualified person to the effect that the work has been carried out and completed in accordance with the Agreement and any applicable development consent;

(c) works as executed plans in respect to the Fit-out Works are provided to Council in a format acceptable to Council;

(d) if required by Council, the Developer has procured from the copyright owner of the plans referred to in clause 7.3(c), a non-exclusive licence in favour of Council to use the copyright in the plans for Council's purposes;

(e) the Developer has furnished to the Council all necessary certificates and warranties relating to the Commercial Strata Lots and Fit-out Works;

(f) the Developer has furnished to the Council copies of all relevant approvals by all authorities and certifiers relating to the Works;

(g) the Developer has furnished to the Council evidence of all relevant services having been connected to the Commercial Strata Lots;

(h) the Developer has removed all of its equipment and construction materials

from the Commercial Strata Lots and Building and made good any damage or disturbance to the Land, Building and Commercial Strata Lots as a result of that removal and the Building and Commercial Strata Lots are left in a neat and tidy state, clean and free of rubbish; and

(i) the Developer has complied with any reasonable written direction from Council under clause 6.4.

7.4 Notwithstanding the provision of a Completion Notice by Council, the Developer must comply with all obligations under this Agreement relating to the delivery of the Development Contribution including but not limited to its obligations to transfer the Commercial Strata Lots free of any encumbrances at no cost to Council and rectification obligations during the Defect Liability Period.

8. Rectification of Defects

8.1 Without limiting the Council's rights generally in respect of Defects during the whole of the Defect Liability Period, the Council may give the Developer one Rectification Notice during the first 6 months of the Defect Liability Period.

8.2 The Developer shall upon receipt of a Rectification Notice, remedy any Defect in the Commercial Strata Lots and Fit-out Works within the time period specified in the notice.

8.3 The Developer, at its own cost, is to comply with a Rectification Notice according to its terms and to the reasonable satisfaction of the Council.

8.4 The Council must give the Developer and its contractors any access necessary to carry out the rectification works.

8.5 When the Developer considers the rectification works are complete, the Developer must notify Council and provide all appropriate documentation including invoices which evidence the rectification works were carried out.

8.6 Provided the Council acting reasonably is satisfied that the rectification works referred to in the Rectification Notice have been carried out in a proper an workmanlike manner and in accordance with the Development Consent and all relevant approvals then the Council must notify the Developer in writing as soon as practicable that it is satisfied or if not satisfied it must issue a further Rectification Notice.

EXECUTED by WAVERLEY COUNCIL with Common Seal of Waverley Council affixed pursuant to a resolution of Waverley Council on

ROSS MCLEOD	**CLR PAULA MASSELOS**
General Manager	Mayor

EXECUTED by **LINDSAY BENNELONG DEVELOPMENTS PTY LTD**
(ACN 002 133 931)
In accordance with section 127 of the Corporations Act 2001

Director	Secretary

EXECUTED by **BONDI LAND PTY LIMITED**
(ACN 615 618 203)
In accordance with section 127 of the
Corporations Act 2001

_____ _____

Director Secretary



COMMERCIAL 1	164.5 m²
COMMERCIAL 2	119.0 m²
COMMERCIAL 4	66.6 m²
COMMERCIAL 5	68.1 m²
COMMERCIAL 6	61.7 m²
COMMON	16.1 m²
COMMON	9.0 m²
Grand total: 7	505.0 m²

This drawing should be read in conjunction with all relevant contracts, specifications and drawings. Dimensions are in millimetres. Levels are metres. Do not scale off drawings. Use figured dimensions only. Check dimensions on Site. Report discrepancies immediately.

NOTES

5	13/05/19	COMMERCIAL 2 AREA ADJUSTED	ARH
4	03/04/19	LEVEL 1 CONCEPT REVISED	ARH
3	29/03/19	LEVEL 1 CONCEPT REVISED	ARH
2	26/03/19	LEVEL 1 FITOUT UPDATED	ARH
1	25/03/19	LEVEL 1 FITOUT OPTION IS SUED FOR COMMENT	ARH

ISSUE DATE SUBJECT VALID'N.

CLIENT

Lindsay Bennelong
21 Solent Cirt,
Baulkham Hills New
South Wales 2153

ARCHITECTS IN ASSOCIATION

Jackson Clements Burrows Architects
T +613 9654 6227
1 Harwood Place,
Melbourne Victoria 3000
www.jcba.com.au

djrd architects
T +612 9319 2955
ABN: 48 942 921 969
Nominated Architects:
Andrew Hipwell 6582
Daniel Beekwilder 6192
63 Myrtle Street
Chippendale NSW 2008
Sydney Australia
djrd.com.au

PROJECT
WHITTON LANE

87 - 99 OXFORD STREET, BONDI JUNCTION

PROJECT PHASE
SUB-CONTRACT TENDER

SHEET STATUS

DRAWN	SCALE AT A1	REVISION DATE
Author	1 : 100	13/05/19

DESCRIPTION
LEVEL 1 FITOUT CONCEPT

PROJECT No	DRAWING No	REVISION
16_431	SK1.400	5

djrd
architects

WHITTON LANE

BASE BUILDING TENANCY SCHEDULE

Issue date: 23.08.2019

The attached documents outline the base building tenancy schedule for Commercial Units 1, 2, 4, 5 & 6 to be occupied by Waverley Council in Lindsay Bennelong's Whitton Lane development at 91 Oxford Street Bondi Junction.

For the purpose of establishing a fit-out budget, DJRD have provided general mid-level specification for finishes, joinery and some FF&E. Services including mechanical, electrical, hydraulic, fire, security, audio visual and hydraulic are to be provided by the Consultant Team.

The following documents form part of the tenancy schedule;

1. Base Building Schedule (below)
2. Indicative tenant block plans. Note, these have not been prepared in consultation with Waverley Council and serve to indicate a general arrangement only.

Item	Description
General Floor Areas	
FLOOR	Carpet tiles equal to Interface World Woven = Colour TBC
WALLS	Plasterboard painted – low VOC paint
WALL SKIRTING	Aluminium commercial skirting 6mm glue fixed
COLUMN LINING	Exposed finish
COLUMN SKIRTING	Aluminium commercial skirting 6mm glue fixed
OFFICE CEILING	Standard 2 way exposed grid ceiling Set plasterboard to perimeter.
OFFICE LIGHTS	General lighting – T5 LED troffer by Engineer
MECH GRILLS	By Engineer. Flush with ceiling
BLINDS	Roller blinds Manual
INTERNAL PARTITIONS – STORE, UTILITY ETC	Slab to ceiling stud partition uninsulated. 1 layer 13mm plasterboard on stud frame.
INTERNAL PARTITIONS – MEETING ROOMS, TOILETS	Slab to slab acoustic partition. 13mm plasterboard on steel stud frame. Insulated,
GLAZED PARTITIONS	Floor to ceiling single glazed partition.
ACOUSTIC WALL LININGS	2200mm high
Toilets	
TOILET FLOOR TILES	To match base building
TOILET WALL TILES	To match base building

TOILET CEILING	To match base building
TOILET LIGHTS	To match base building
SANITARY FITTINGS	To match base building
Tea points / kitchenettes	
FLOOR	Vinyl
SPLASHBACK	Colour backed glass
BENCHTOP	Laminate
CABINETRY	Laminate doors on melamine carcass.
KITCHEN EQUIPMENT	Full height fridge, microwave, waste bins, boiling & chilled water tap, sandwich press, stainless steel sink, paper towel dispenser.
Workplace assume (TBC)	
JOINERY	Kitchenettes to commercial 1 and (4/5/6) and storage cupboards to commercial tenancy 2
Services (by others)	
POWER & DATA	Include cable trays, phones, data and power points
SECURITY	Include alarm, monitoring and card readers
MECHANICAL	Include ceiling grills and insulation
HYDRAULIC	Include additional connections, water, hot water, waste, etc