

# **Planning Agreement**

**Inner West Council**

**And**

**The Yard 120C Pty Ltd**

**JOHNSON WINTER & SLATTERY**

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## Planning Agreement

### Date

### Parties

- 1 Inner West Council** (ABN 52 659 768 527) (**Council**)
- Address: Administrative Centre, 2 Fisher Street, Petersham, NSW 2049
- Email: [bojan.sodic@innerwest.nsw.gov.au](mailto:bojan.sodic@innerwest.nsw.gov.au)
- Contact: Bojan Sodic
- 2 The Yard 120C Pty Ltd** (ACN 610 050 541) (**Developer**)
- Address: 2 Tebbutt St, Leichardt, NSW 2040
- Email: [jamie@Theyard120c.com](mailto:jamie@Theyard120c.com)
- Contact: Jamie Howieson

### Recitals

- A** The Developer intends to lodge with Council one or more Development Applications seeking approval to carry out the Development on the Land.
- B** The Developer has made a Planning Proposal in relation to the Land.
- C** This Agreement describes the Developer Contributions which will be provided to Council if the Planning Proposal and the Development Application/s are approved.
- D** The Developer and the Council agree to enter into this agreement.

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

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#### 1 Definitions and interpretation

##### 1.1 Definitions

The following definitions apply in this document, unless the context requires otherwise.

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

**Affordable Housing** has the same meaning as in the Act.

**Affordable Housing Units** means the affordable housing units identified in Item 8 of Schedule 1.

**Approved Development** means the development the subject of the Development Consent.

**Caveat** has the same meaning as under the *Real Property Act 1900* (NSW)

**Completion** means the stage in the construction of the Pocket Park when, in the reasonable discretion of the Council's Representative and notified under clause 6.4(b), the Pocket Park is complete except for minor omissions and minor defects which are non-essential and:

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- (a) which do not prevent the Pocket Park from being reasonably capable of being used for its intended purpose;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Pocket Park.

**Contributions Plan** means the *Ashfield Council Section 94 Development Contributions Plan* which commenced on 16 November 2010, including any revisions or modifications to that plan or any plan that is adopted by council in replacement of that plan.

**Council's Representative** means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Agreement.

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

**Defects Liability Period** means the period of 12 months from the date:

- (a) of Completion insofar as the Pocket Park is concerned; or
- (b) the Affordable Housing Units are transferred to Council.

**Developer** means the entity described in Item 1 of Schedule 1.

**Development** means a proposal generally in accordance with Item 4 of Schedule 1 to be completed by the Developer in accordance with the Development Consent.

**Development Application** means a development application that seeks development consent for the Development and includes all plans, reports models, photomontages, material boards (as amended or supplemented) submitted to the consent authority before the determination of that Application.

**Development Consent** means any planning approval granted by the Council for the Development under the Act and includes all modifications made to such a consent.

**Developer's Contribution** means the sum of the Monetary Contribution, the Affordable Housing Units to be transferred to Council, the construction of the 'Pocket Park' and the leasing of the community office space as provided for in this Agreement and as summarised in Schedule 2.

**Easement Site** means the land over which an easement for access will be granted to Council in accordance with clause 6 of this Agreement and shown indicatively in Annexure A.

**FSR** means floor space ratio.

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

**LEP** means the *Ashfield Local Environmental Plan 2013*.

**Monetary Contribution** means an unendorsed bank cheque for the amount set out in Item 6 of Schedule 1 to be used by Council for or applied towards a public purpose including but not limited to those purposes described in the Contributions Plan.

**NSW LRS** means NSW Land Registry Services.

**Occupation Certificate** has the same meaning as in the Act.

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

**Pocket Park** means the park described in Item 5 of Schedule 1.

**Planning Proposal** means the planning proposal relating to the Land described in Item 7 of Schedule 1.

**Site** means the Land as shown on Annexure B to this Agreement.

## 1.2 Interpretation

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

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

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## 2 Planning Agreement under the Act

The parties agree that this Agreement is a Planning Agreement governed by subdivision 2 of Division 7.1 of Part 7 of the Act.

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## 3 Application of Sections 7.11 and 7.12 of the Act to the Development

- (a) The parties agree that this agreement wholly excludes the operation of sections 7.11 and 7.12 of the Act in relation to the Development Application so that neither s7.11 nor s7.12 contributions under the Act will be paid in relation to the Development.
- (b) The Council warrants that it will not make any claim or demand for a contribution in respect of the Development over and above the Developer's Contribution, unless there is a modification to the Development Consent that would increase the demand for public amenities and services generated by the Development. In such case, the parties will engage in good faith negotiations as to development contributions in relation to such a modification with a view to such contributions being no less than the additional monies that would have been payable under s.7.11 or s.7.12 of the Act (if applicable and whichever is the greater) for the modification save for the operation of this clause 3.

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## **4 Scope and application of this Agreement**

This Agreement applies to:

- (a) The Land;
- (b) the Planning Proposal; and
- (c) the Development.

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## **5 Operation of this Agreement**

- (a) Clause 11 takes effect on execution of this Agreement.
- (b) The parties agree that the balance of the terms of this Agreement are effective and binding on the parties if the amendment to the LEP proposed by the Planning Proposal is made, resulting in the LEP being amended to rezone the western portion of the Land (Lot 1 DP 817359) from SP2 Infrastructure to B4 Mixed Use and to alter the FSR and maximum building height across the entire Site.
- (c) The parties agree that the Developer is not bound by this Agreement to provide the Developer Contributions unless:
  - (i) Development Consent is granted to the Development Application; and
  - (ii) The Development is physically commenced or used as provided in section 4.53 of the Act.
- (d) This Agreement terminates when the Developer has satisfied all of its obligations under this Agreement or when the Development Consent lapses in accordance with the Act.

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## **6 Pocket Park**

### **6.1 Developer's obligations**

The Developer agrees to construct the Pocket Park:

- (a) In accordance with the Development Consent;
- (b) In a proper and workmanlike manner; and

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- (c) In accordance with the relevant Construction Certificate.

## **6.2 Specifications of the Pocket Park**

- (a) Subject to clause 6.1, the Developer is responsible for the construction of all aspects of the Pocket Park including:
  - (i) Turfing and planting;
  - (ii) Park furniture;
  - (iii) Stone features;
  - (iv) Pathways;
  - (v) Fencing of the Pocket Park;
  - (vi) Retaining walls;
  - (vii) Providing access to the Pocket Park;
  - (viii) Bridge/headwords to the canal;
  - (ix) Interpretative signage;
  - (x) Park lighting; and
  - (xi) The construction of a stair and public pathway connecting the Pocket Park to the Greenway.
- (b) The design and construction of the Pocket Park must be generally consistent with the drawing at Annexure A and incorporate Council's Green way and public open space specifications and/or any other specification relevant to the design of the Pocket Park.

## **6.3 Design of the Pocket Park**

- (a) Prior to lodgement of the Development Application for the Development, the Developer must prepare a detailed description, including design drawings, for the Pocket Park and submit to Council's Representative for approval, such approval not to be unreasonably withheld.
- (b) The Council will promptly (and in any event within 20 business days of submission), give the Developer notice whether or not the design drawings and description of the Pocket Park prepared under clause 6.3(a) are satisfactory. If the design or description is not satisfactory, then Council will, acting reasonably, identify the further information, or modifications (as the case may be) which are required. The Developer must promptly amend the proposed design to address Council's reasonable requirements and resubmit the design drawings and description in accordance with clause 6.3(a).
- (c) The design plans submitted for the construction certificate for the Pocket Park must be consistent with the design approved by Council under clause 6.3(b).

## **6.4 Completion of the Pocket Park**

- (a) When, in the opinion of the Developer, the Pocket Park has reached Completion, the Developer must notify the Council's Representative in writing.



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- (b) The Council's Representative must within 14 business days of receiving notice under clause 6.4(a) inspect the Pocket Park and by written notice to the Developer state whether Council:
  - (i) agrees that Completion has been achieved; or
  - (ii) disagrees that Completion has been achieved and identifies the errors or omissions which, in the reasonable opinion of the Council's representative, prevent Completion from being achieved.
- (c) The Pocket Park must reach Completion prior to the issue of an Occupation Certificate for the final stage of the Development.

#### **6.5 Defects**

If the Council notifies the Developer of a defect in the Pocket Park within the Defects Liability Period, subject to the resolution of a dispute in accordance with this Agreement, the Developer must remedy that defect to the reasonable satisfaction of the Council's Representative, within a reasonable period (having regard to the nature of the defect).

#### **6.6 Grant of easement**

The Grantor, at its cost:

- (a) covenants to Council to maintain and repair the Easement Site so as to keep it in good order and condition, including without limitation regular cleaning and maintenance of any landscaped areas within the Easement Site;
- (b) grants to Council (including without limitation, members of the public as permitted by Council from time to time), subject to clause 6.8(a), the right to enter pass and repass the Easement Site and use any facilities located in the Easement Site which are intended for public use at all times;
- (c) covenants to Council to install and maintain an adequate lighting system in the Easement Site (having regard to the fact that the Easement Site is to be used as a public space and as a cycleway and pedestrian link as part of the Greenway); and
- (d) covenants to Council to maintain at all times public liability insurance for the Easement Site for an amount of not less than \$20,000,000 and provide to Council a certificate of currency for such insurance on an annual basis.

#### **6.7 Obligations when exercising rights**

When Council exercises its rights or complies with its obligations under this easement, Council must:

- (a) use reasonable endeavours to minimise inconvenience or interruption to the Grantor or an occupier of the Lot Burdened and if possible, give the Grantor notice of any planned activities that may cause inconvenience or interruption; and
- (b) take reasonable precautions to ensure that no damage is caused by Council to the Easement Site or the Lot Burdened and if any damage is caused by Council, Council must promptly repair such damage at its cost.

#### **6.8 Conditions**

- (a) The Grantor may, acting reasonably and after giving not less than 5 days' prior written notice to Council (except in the case of an emergency when such notice is not required), temporarily suspend use of the Easement Site from time to time and

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to the extent necessary, to undertake works or to implement measures for the security, safety, maintenance and repair of the Easement Site.

- (b) If any damage (other than fair wear and tear and damage caused by Council under clause 6.7(b)) occurs to any part of the Easement Site, then the Grantor must promptly repair such damage.

#### **6.9 Council's right to enter the Lot Burdened**

- (a) Council may on reasonable prior notice to the Grantor require the Grantor to carry out such work as Council may reasonably require to ensure the Grantor complies with its obligations under this easement.
- (b) If the Grantor does not comply with any notice issued under clause 6.9(a) within a reasonable time (having regard to the nature of the work), Council or its Authorised Users may enter the Lot Burdened with all necessary equipment and carry out any work which Council in its discretion considers reasonably necessary to comply with the notice under clause 6.9(a). In carrying out work under this clause, Council must, having regard to the nature and extent of the work to be carried out:
  - (i) cause as little inconvenience as is practicable to the Grantor and any Occupier of the Lot Burdened; and
  - (ii) as soon as practicable, repair damage which it causes to the Lot Burdened.
- (c) Council may recover from the Grantor, as a debt due and payable in a court of competent jurisdiction, any expense reasonably incurred in exercising its rights under this clause 6.9.

#### **6.10 Name of the authority having the right to release vary or modify the easement**

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## **7 Community Office Space**

### **7.1 Lease of community office space**

- (a) Within 14 days of the registration of the strata plan for the Approved Development which includes the retail space, the Developer must enter into a lease with Council for 35 m2 of community office space located within the Ground Floor retail space of the Approved Development in a form consistent with Annexure D (**Standard Lease**), subject to clause 7.1(b).
- (b) The parties agree that the Standard Lease is to be amended as follows:
  - (i) The Lessor is the Developer and the Lessee is the Council (Cover page of the Standard Lease);
  - (ii) A Guarantor is not required (Item 10 of Annexure A of the Standard Lease);
  - (iii) There is no additional leased property (Item 11 of Annexure A of the Standard Lease)
  - (iv) The lease term is five years, with no option to renew (Cover Page and Item 12 of Annexure A of the Standard Lease);

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- (v) The rent is fixed at \$1 per year for the term of the lease with no rent review date/s (Cover page and Items 13 and 16 of Annexure A of the Standard Lease);
- (vi) The permitted use of the premises is community uses consistent with the nature of the Development (Item 17 of Annexure A of the Standard Lease);
- (vii) The public liability insurance is \$20,000,000 (Item 18 of Annexure A of the Standard Lease);
- (viii) A bank guarantee is not required (Item 19 of Annexure A of the Standard Lease);
- (ix) No security deposit is required (Item 20 of Annexure A of the Standard Lease);
- (x) Add an additional lease covenant to Annexure B through adding the following clause to Annexure A:  
  
*'The lessee indemnifies the lessor against all claims, demands, actions, suits, judgments, orders, decrees, damages, costs, losses and expenses for which the lessor becomes liable arising from:*
  - (a) *loss or damage to the property or to any other property or injury to or death of any person that arises from the lessee's occupation of the Premises; or*
  - (b) *the lessee's default under this lease,**except to the extent caused or contributed to by the default or the negligent or wilful act or omission of the lessor or its employees, contractors, agents or invitees'*

## 7.2 Use of community office space

Council undertakes to ensure that the use of the community office space is consistent with the nature of the Development and that the use of the community office space does not impact on the reasonable use and enjoyment of the Development by residents or other commercial leaseholders.

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## 8 Affordable Housing Units

### 8.1 Developer's obligations

- (a) The Developer must construct the Affordable Housing Units:
  - (i) In accordance with the Development Consent;
  - (ii) In a proper and workmanlike manner; and
  - (iii) In accordance with the relevant Construction Certificate.
- (b) The Affordable Housing Units must be completed to the same standard of all other similar apartments within the Development.

## 8.2 *Transfer of Affordable Housing Units*

- (a) The Developer agrees to transfer legal title to the Affordable Housing Units to Council for no consideration. In this clause 8.2, "transfer date" means the date that the Developer gives the Council the items in clause 8.2(g).
- (b) Promptly upon NSW LRS registering the strata plan for the Approved Development, the Developer will determine, acting in good faith, the location and lot numbers of the Affordable Housing Units to be transferred to Council.
- (c) Promptly after the Developer determines the location and lot numbers of the Affordable Housing Units to be transferred to Council, the Developer must notify Council that the strata plan is registered and give Council a copy of the registered strata plan including specification of the location and lot numbers of the Affordable Housing Units. The Developer must also provide Council with a schedule of fixtures and fittings provided within the Affordable Housing Units, including any applicable owners manuals and warranties associated with such fixtures and fittings.
- (d) The Developer must provide Council with an opportunity to inspect the Affordable Housing Units prior to the transfer date. The Developer agrees to promptly repair any defect in an Affordable Housing Unit that the Council brings to the attention of the Developer either, prior to the transfer date or during the Defects Liability Period.
- (e) The Council is responsible for all costs and expenses in connection with the transfer of the Affordable Housing Units, including without limitation:
  - (i) any stamp duty;
  - (ii) rates, taxes, charges, levies and other outgoings for the period after the transfer date ;
  - (iii) registration fees payable to the NSW LRS; and
  - (iv) any other costs (including without limitation its legal costs).
- (f) Within 14 days after the location and lot numbers are determined under clause 8.2(c), Council must give the Developer the NSW LRS form of transfer, which has been stamped and duly executed by Council.
- (g) Within 14 days after receiving the transfer under clause 8.2(f), the Developer will duly execute the transfer and deliver to Council:
  - (i) the executed transfer, dated with the date of delivery;
  - (ii) the original certificates of title for the Affordable Housing Units or evidence that the certificates of title have been produced at NSW LRS for the purposes of registering the transfer ;
  - (iii) a copy of the relevant Occupation Certificate; and
  - (iv) if applicable, a discharge of mortgage for any mortgage registered on title to the Affordable Housing Units and releases of any security interests registered over the Affordable Housing Units.

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- (h) Except as provided by clause 8.2(d), upon delivering the items under clause 8.2(g) to Council, the Developer owes no further obligations to Council in connection with the transfer of the Affordable Housing Units. Council must promptly lodge the items under clause 8.2(g) at NSW LRS.
- (i) After the transfer date, the Developer will notify the Council of the total amount that Council owes the Developer under clause 8.2(e) (together with reasonable details of that amount). The Council must pay the amount to the Developer within 14 days of the Developer giving the Council notice. If the Council disputes the amount notified by the Developer, then the parties must seek to resolve the dispute as soon as possible, both parties acting reasonably and in good faith. Promptly after the dispute is resolved the Council must pay to the Developer the amount that the parties agree is owed by the Council to the Developer under clause 8.2(e).

### **8.3 Council acknowledgments**

- (a) The Council agrees that the Affordable Housing Units do not include any car spaces or any right for car parking on the Land.
- (b) The Council agrees that the provision of the Affordable Housing Units pursuant to this Agreement satisfies the objectives of any Environmental Planning Instruments that apply to the Land, any Affordable Housing Policy and Development Control Plan requiring the provision of Affordable Housing on the Land and that Council must not require any further provision of Affordable Housing or any contribution for Affordable Housing beyond what is provided pursuant to this deed.

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## **9 Payment of Monetary Contribution**

The Developer shall pay the Monetary Contribution prior to the issuing of any Occupation Certificate for the final stage of the Approved Development.

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## **10 Registration of this Agreement**

### **10.1 Registration of Agreement**

The Developer must promptly:

- (a) obtain any necessary consents to the registration of this Agreement on the title to the Land;
- (b) lodge the Agreement for registration with Land & Property Information;
- (c) promptly comply with any Requisitions that may be raised with regard to registration of the Agreement from Land & Property Information;
- (d) produce to the Council within 35 days of execution of this Agreement details of lodgement of the Agreement with Land & Property Information; and
- (e) following registration of the Agreement, notify the Council of registration, enclosing a title search of the Land confirming the registration.

### **10.2 Release by Council**

The Council agrees to provide the Developer with a release and discharge of this Agreement from any part of the Land with respect to which the Developer has complied with its obligations under this deed (**Release Land**) subject to clause 10.3.

### **10.3 Progressive release by Council**

The Council:

- (a) acknowledges that:
  - (i) the Development is likely to be constructed in stages;
  - (ii) certain components of the Development Contributions are not required to be provided until after the Occupation Certificate for the final stage of the Development;
  - (iii) prior to providing those components of the Development Contributions to Council, a number of dwellings will have been constructed and occupation certificates will have been issued for those dwellings; and
  - (iv) the Developer may enter into contracts for the sale of the dwellings before those components of the Development Contribution have been provided to Council; and
- (b) must, within 28 days of the Developer submitting the relevant documents to Council, sign such documentation as the Developer may require to remove this deed from the Register for that part of the Land which comprises constructed dwellings to enable the Developer to complete the sale of those dwellings, provided always that the Developer has then complied with its obligations under this deed.

### **10.4 Removal of Agreement**

After the Monetary Contribution has been paid, the Pocket Park has been constructed and the Affordable Housing Units have been transferred to Council, the Council will promptly execute any form and supply such other information and do anything as reasonably required by the Owner or the Developer to enable the removal of the Agreement from the title to the Land.

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## **11 Caveat**

- (a) Without limiting any other provision of this Agreement, during the period commencing on the date of this agreement until such time as any of clauses 5(d) or 10.4 take effect, the Developer agrees that Council may lodge and maintain a caveat over the Land precluding any dealing which is inconsistent with this Agreement.
- (b) If the Council lodges a caveat in accordance with clause 11(a), then the Council must promptly do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
  - (i) This Agreement;
  - (ii) Any plan of consolidation or subdivision contemplated, required or permitted under this Agreement or any Development Consent;
  - (iii) Any other dealing contemplated, required or permitted under this Agreement or any Development Consent; and
  - (iv) The transfer of any part of the Land to a related body corporate of the Developer or a trust or fund of which a related body corporate of the Developer is a trustee, manager or responsible entity.

- (c) The Council must promptly do all things reasonably required to remove the caveat from the titles of the Land once either of clauses 5(d) or 10.4 take effect.

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## 12 Enforcement

This Agreement may be enforced by either party in any Court of competent jurisdiction.

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## 13 Assignment and Dealings

Neither the Developer nor any subsequent Owner of the Land shall sell, transfer, assign or novate or similarly deal with (Dealing) their right, title or interest in the Land (or any part thereof) or any of their rights or obligations under this Agreement, or allow any interest in them to arise or be varied unless the Developer and/or Owner of the Land:

- (a) gives Council no less than twenty-eight (28) days notice in writing of the proposed Dealing; and
- (b) procures that the transferee, assignee or novatee executes and delivers to Council prior to any such Dealing taking effect an agreement in favour of Council in form and substance acceptable to Council, acting reasonably, whereby the transferee, assignee or novatee becomes contractually bound with Council to perform all of the Developer's and/or Owner's obligations and have the benefit all of the Developer's and/or Owner's rights under this Agreement.

Neither the Developer nor any subsequent Owner of the Land shall mortgage or charge or create any estate or interest in the Land unless the Developer and/or Owner of the Land obtains the written consent of any person being the mortgagee or chargee or having that estate or interest to the registration of this Agreement under the *Real Property Act 1900*.

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## 14 Dispute Resolution

### 14.1 Reference to dispute

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

### 14.2 Notice of dispute

- (a) The party wishing to commence dispute resolution processes must notify the other of:
  - (i) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve latter than by way of this clause 14;
  - (ii) the intent to involve this clause 14;
  - (iii) (if practicable) the outcomes which the notifying party wishes to achieve; and
  - (iv) any material impact which the dispute has upon the completion of the Developer's Works, the Developer's Contribution or the transfer of land in accordance with clause 8 (and in particular the completion of the remainder of the Development).
- (b) The contents of a notice issued under the clause 14.2(a) are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

**14.3 Principals of parties to meet**

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

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

**14.4 Neither party may constrain**

If:

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

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

**15 Notices****15.1 Service of Notice**

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

- (a) delivered or posted to that Party at its address set out in Item 9 of Schedule 1; or
- (b) faxed to that Party at its fax number set out in Item 9 of Schedule 1.

**15.2 Change of address**

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

**15.3 Time of service of Notice**

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

- (a) if it is delivered, when it is left at the relevant address;
- (b) if it is sent by post, two business days after it is posted; and



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

#### **15.4 Service after hours, on weekends and holidays**

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5:00 pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

---

### **16 Approvals and consent**

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

---

### **17 Variation of Agreement**

The parties may agree to vary the terms of this Agreement. Any such variation shall be evidenced by a written variation and must comply with section 7.5 of the *Environmental Planning and Assessment Act 1979*.

---

### **18 Costs**

#### **18.1 Legal and administrative costs**

Each party must pay their own legal and administrative costs and expenses in relation to:

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

#### **18.2 Stamp duty**

Except as otherwise set out in this Agreement, the Developer is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

---

### **19 Entire Agreement**

- (a) 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.
- (b) The explanatory note prepared in relation to this Agreement under the *Environmental Planning and Assessment Regulation 2000* (NSW) must not be used to assist in construing this Agreement.

---

## **20 Further acts**

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

---

## **21 No fetter**

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

---

## **22 Governing law and jurisdiction**

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

---

## **23 Joint and several liability**

- (a) Any agreement, covenant, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually.
- (b) Nothing in this Agreement will be construed as limiting or fettering in any way the exercise by Council of any statutory discretion or duty.

---

## **24 Representations and warranties**

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

---

## **25 Severability**

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

---

## **26 Modification**

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

---

## **27 Waiver**

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

---

## **28 GST**

- (a) In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*.

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- (b) If a party to this Agreement (the "Supplier") makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- (c) If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing (reimbursable expense) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- (d) If a party to this Agreement has the benefit of an indemnity for a cost, expense, loss or outgoing (indemnified cost) under this Agreement, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- (e) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- (f) Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

**Schedule 1 – Reference Schedule**

Item 1	Developer's Details	Name: The Yard 120C Pty Ltd ACN: 610 050 541 Address: 2 Tebbutt St, Leichardt, NSW 2040
Item 2	Council's Representative	Group Manager, Property
Item 3	Land	Lot 1 in Deposited Plan 817359 and Lot 100 in Deposited Plan 875660, known as 120C Old Canterbury Road, Summer Hill NSW
Item 4	Development	A mixed use development comprising mainly of residential housing, with some retail space and car spaces as shown conceptually in the Fox Johnson Concept Design Plans contained at Annexure C.
Item 5	Pocket Park	A park of approximately 300m2 located within the Land and shown conceptually on the diagram at Annexure A
Item 6	Monetary Contribution	An amount equivalent to the amount that would be payable under a condition of development consent imposed in accordance with ss.7.11 and 7.13 of the Act having regard to the Contributions Plan, such amount to be calculated on the date that the Monetary Contribution is paid.
Item 7	Planning Proposal	Amendment of the <i>Ashfield Local Environmental Plan 2013</i> as follows: <ul style="list-style-type: none"> <li>- Rezone the western allotment (Lot 1 DP 817359) from SP2 Infrastructure to B4 mixed Use;</li> <li>- Apply a maximum height of RL41.1 across the entire Site; and</li> <li>- Apply a FSR of 2.751 across the entire Site.</li> </ul>
Item 8	Affordable Housing Units	2 x mid-range studio apartments approximately 35m2 each (no car spaces), where mid-range is a unit that is located above the second floor but below the top floor within the Approved Development.
Item 9	Notices	<p><b>Council</b></p> <p>Name: Inner West Council</p> <p>Address: Administrative Centre 2 Fisher Street PETERSHAM NSW 2049</p> <p>Attention: Bojan Sodic</p> <p>Telephone: 02 9392 5839</p> <p>Email: <a href="mailto:bojan.sodic@innerwest.nsw.gov.au">bojan.sodic@innerwest.nsw.gov.au</a></p> <p><b>Developer</b></p> <p>Name: The Yard 120C Pty Ltd</p> <p>Address: 2 Tebbutt St, Leichardt, NSW 2040</p> <p>Attention: Jamie Howieson</p>

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Telephone: (02) 9569 6988

Facsimile: (02) 9569 6984

Email: [jamie@theyard120c.com](mailto:jamie@theyard120c.com)

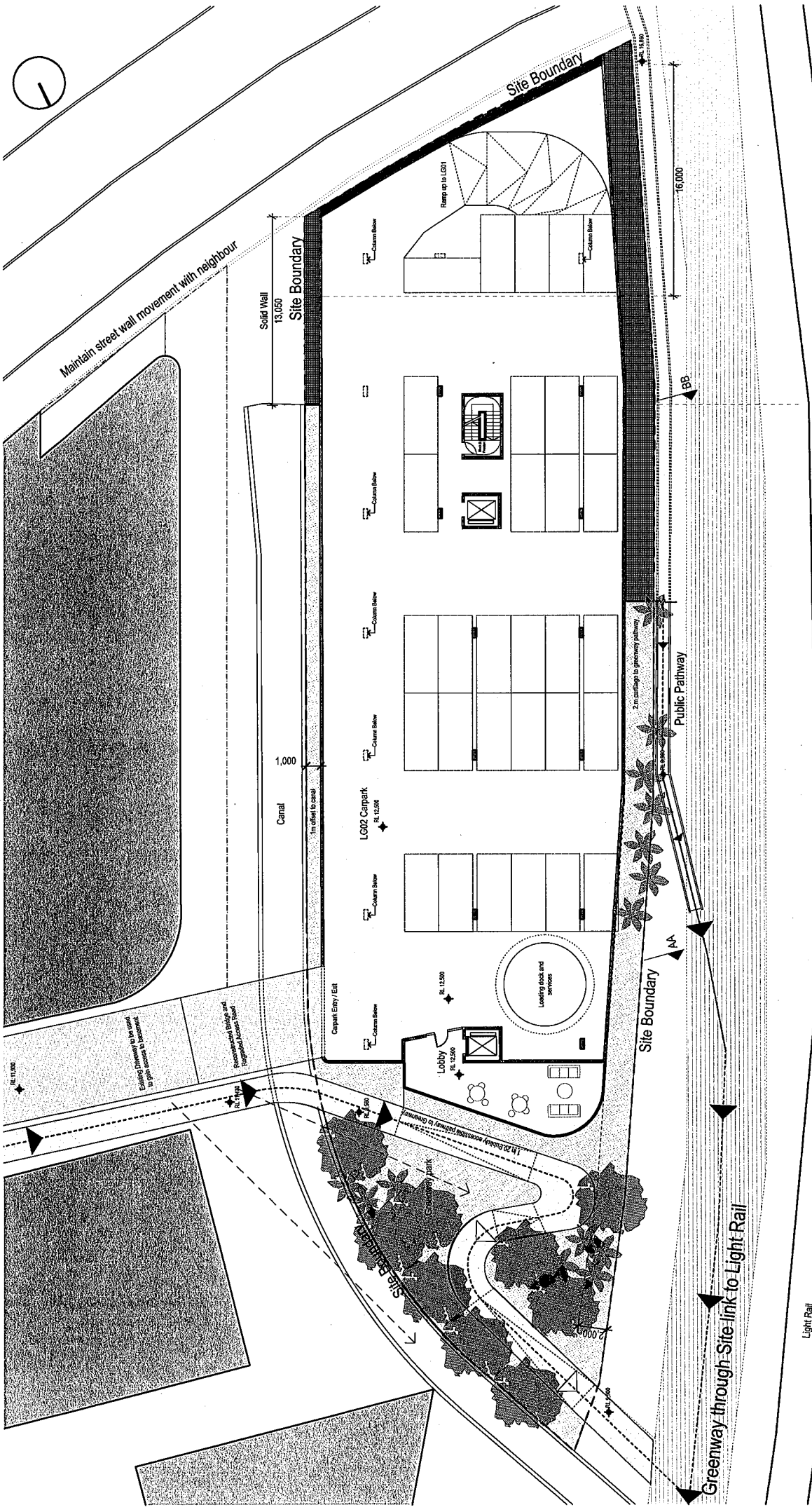
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**Schedule 2 – Developer's Contributions Summary**

Description of Developer's Contribution	Estimated cost/ value	Timing
1. Construction of 300m2 'Pocket Park'.	Estimated maximum construction cost - \$1,630,750	Pocket Park to be completed in accordance with this agreement.
2. Transfer of two Affordable Housing Units located on the Site to Council.	Total approximately \$1,300,000 (being 2 x 'mid-range' 35m2 studio units without car spaces)	Following the registration of the strata plan for the stage of the Approved Development that includes the Affordable Housing Units and an in accordance with the process contained in clause 8 of this agreement
3. Lease of 35 m2 of community office space to Council for a period of 5 years for \$1/year for the term of the lease.	Approximately \$200,000 (35m2 at estimated rental saving of \$40,000 per year for term of lease)	Lease to be entered into with Council within 14 days of the registration of the strata plan for the Approved Development which includes the retail space.
4. Monetary Contribution to be used by Council for or applied towards a public purpose including but not limited to those purposes described in the Contributions Plan.	An amount equivalent to the amount that would be payable under a condition of development consent imposed in accordance with s.7.11 of the Act having regard to the Contributions Plan, such amount to be calculated on the date that the Monetary Contribution is paid.	Monetary Contribution to be paid to Council prior to the issuing to the issue of any Occupation Certificate for the final stage of the Approved Development.

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## Annexure A – Pocket Park



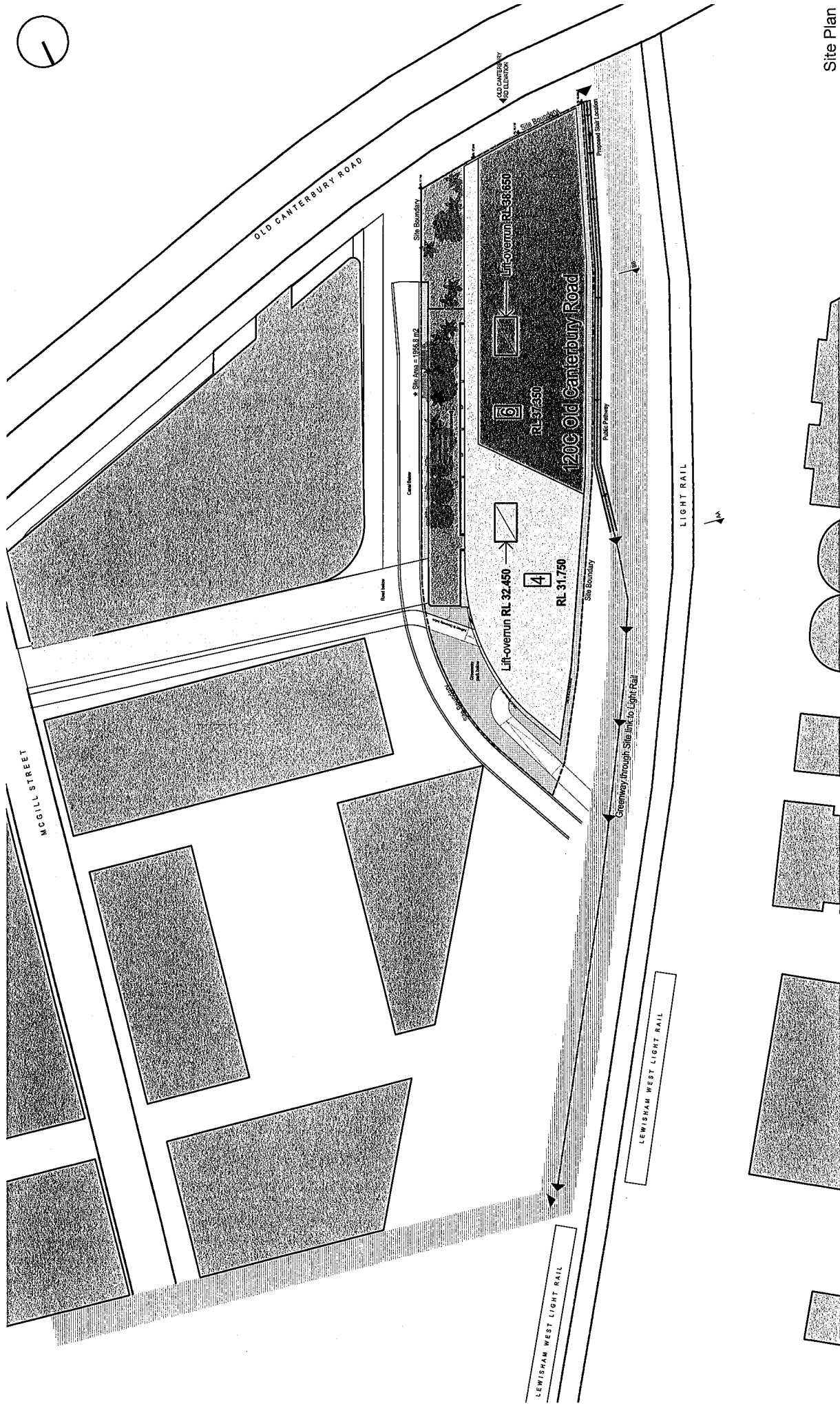
Lower Ground 02  
1 : 250 @ A3  
ADG Compliance

120C Old Canterbury Road, Lewisham  
August 2018



JOHNSON WINTER & SLATTERY

## Annexure B –Site Plan



Site Plan  
1 : 500 @ A3

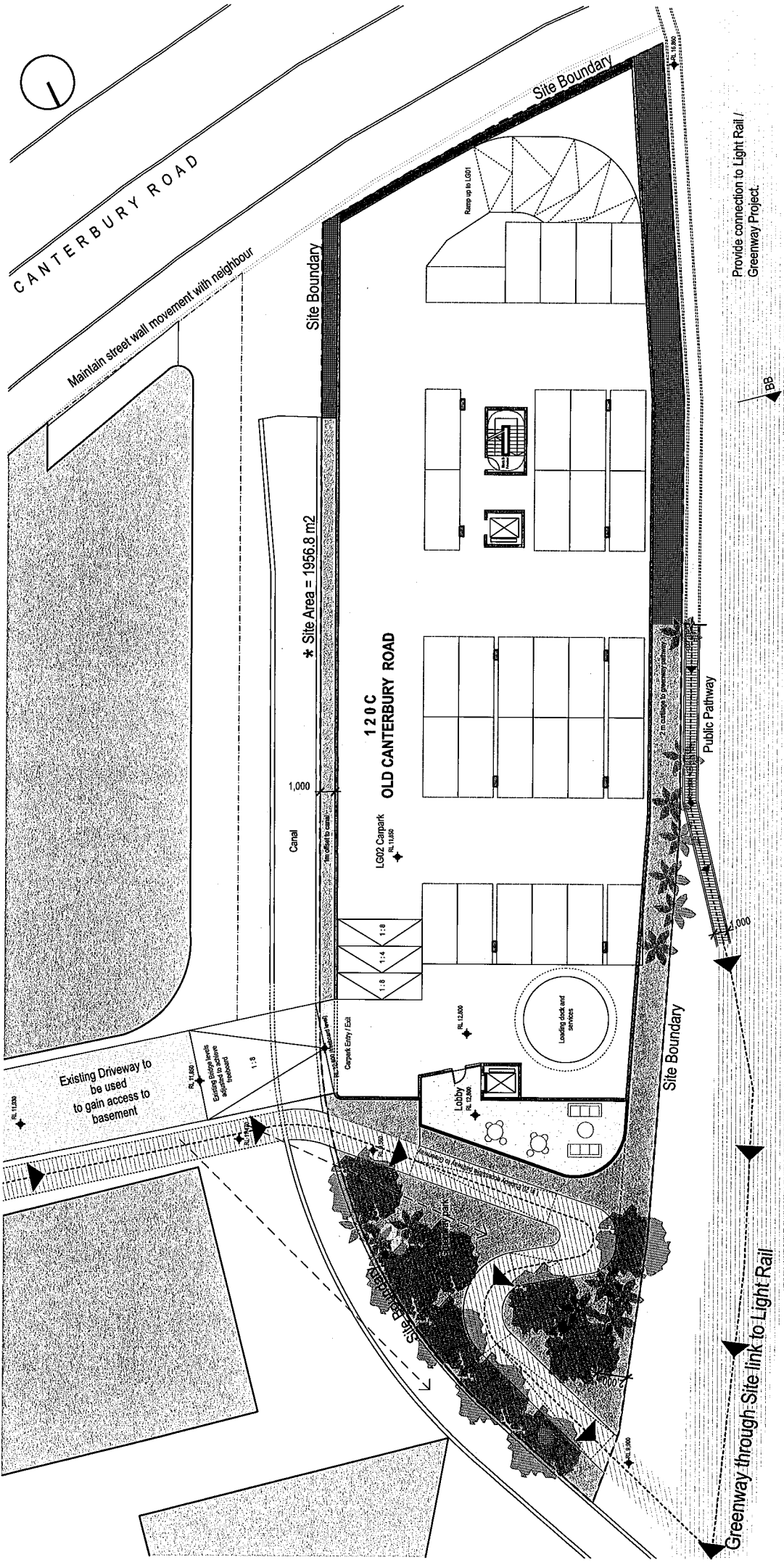
ADG Compliance

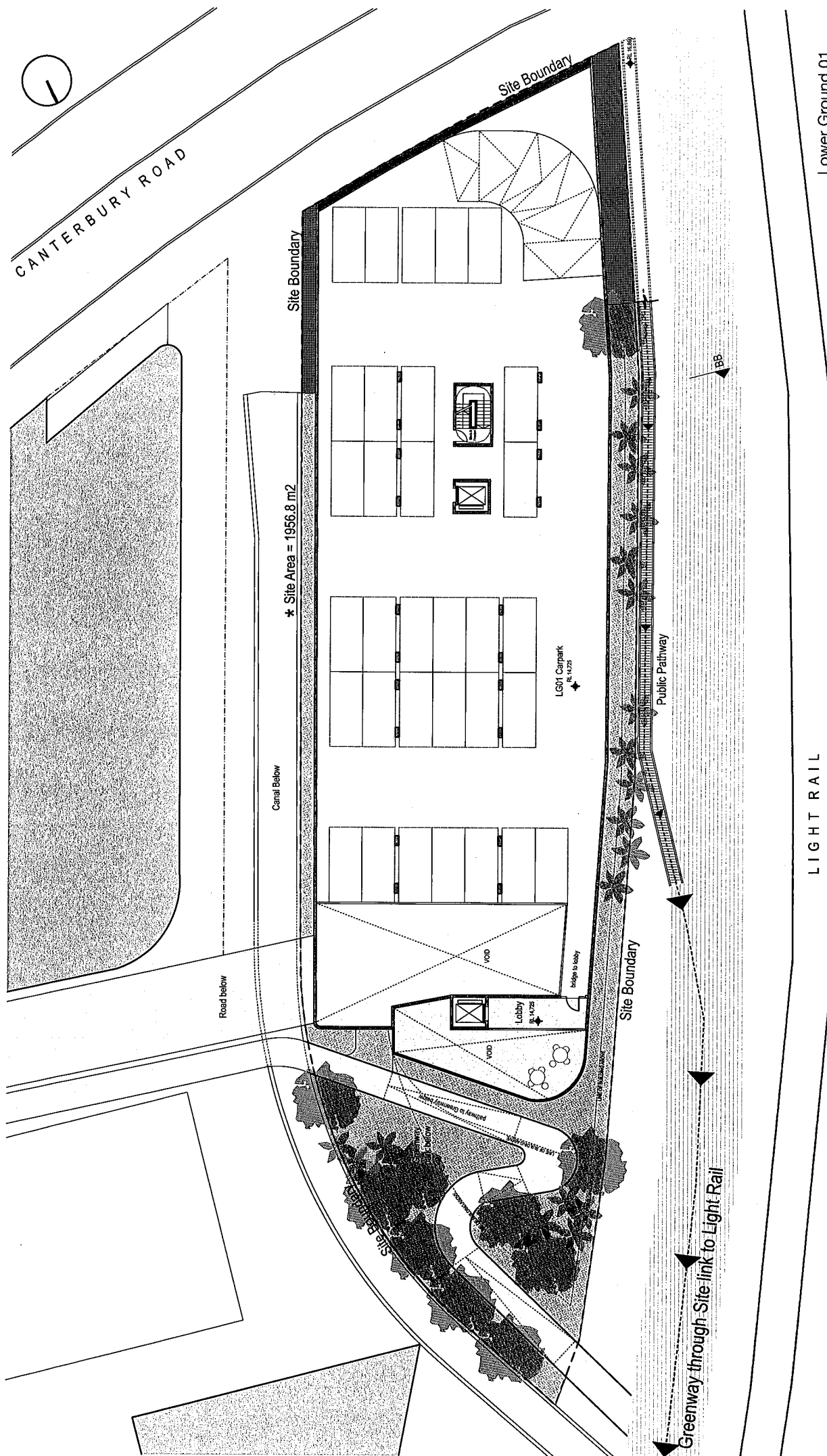
120C Old Canterbury Road, Lewisham

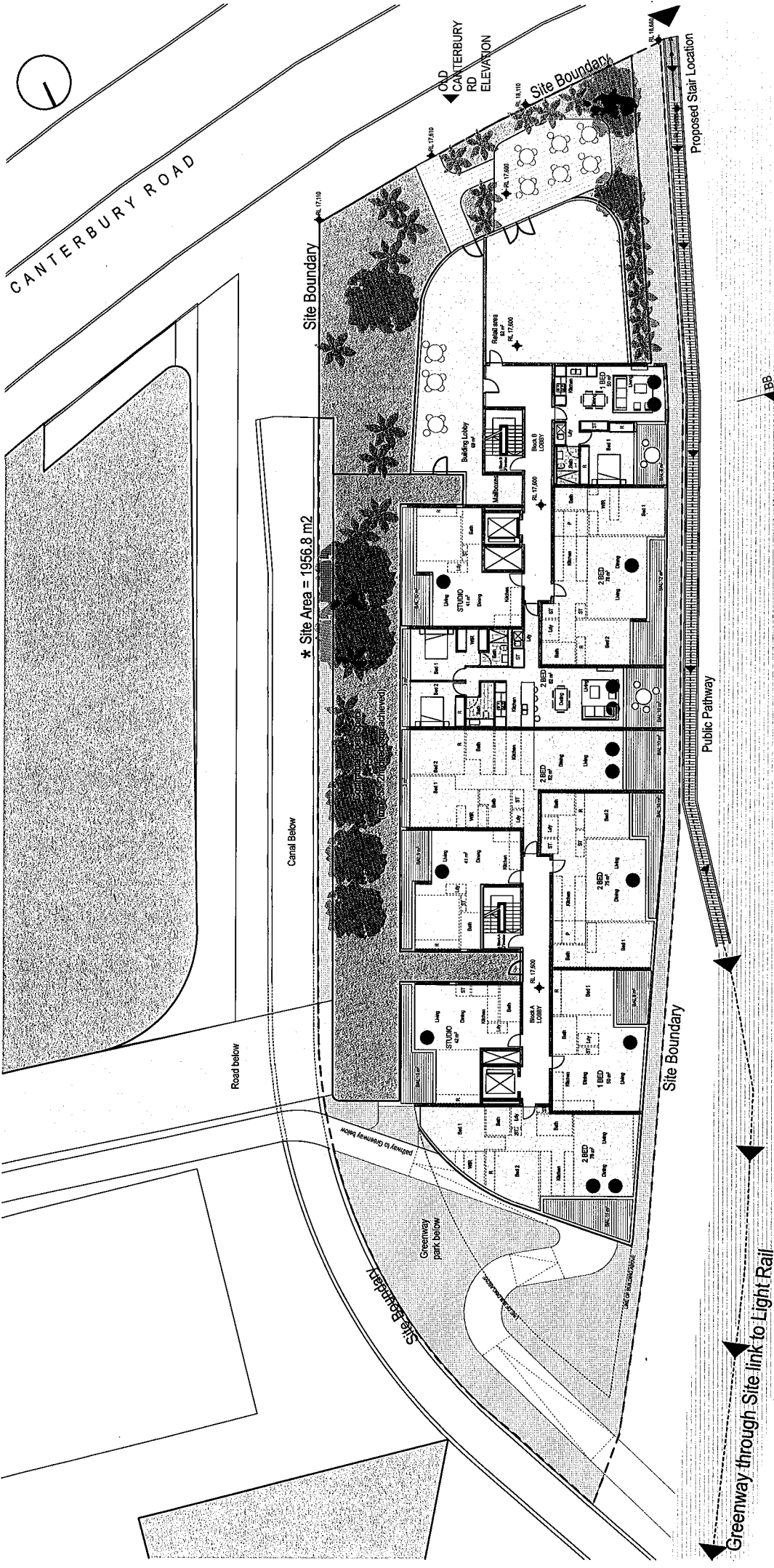
August 2018

JOHNSON WINTER & SLATTERY

## **Annexure C - Fox Johnson Concept Design Plans**







- Natural Cross Ventilation Compliance
- Solar Compliance
- Solar Compliance (Skylight)

Ground  
1 : 250 @ A3

ADG Compliance

120C Old Canterbury Road, Lewisham

August 2017

1

CANTERBURY ROAD

\* Site Area = 1956.8 m2

Canal Below

Road below

Greenway  
park below

Site Boundary

Site Boundary

Site Boundary

LIGHT RAIL

Level 01 - 03  
1 : 250 @ A3

ADG Compliance

120C Old Canterbury Road, Lewisham

August 2017

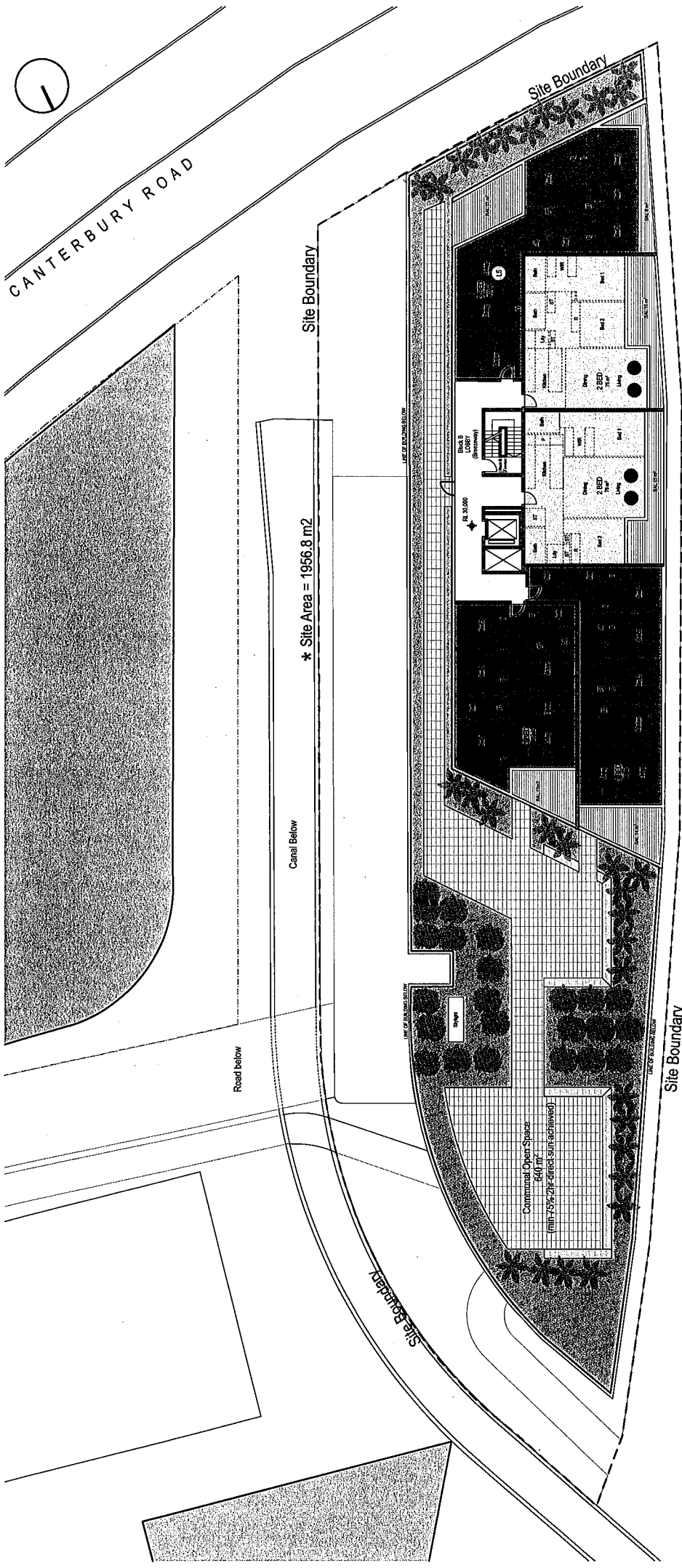
- Natural Cross Ventilation Compliance
- Solar Compliance
- Solar Compliance (Skylight)

AA

BB

Fox  
Johnston





\* Site Area = 1956.8 m2

Level 04 - 05  
1 : 250 @ A3

ADG Compliance

120C Old Canterbury Road, Lewisham  
August 2017

- Natural Cross Ventilation Compliance
- Solar Compliance
- Solar Compliance (Skylight)



LIGHT RAIL

**Fox  
Johnston**



JOHNSON WINTER & SLATTERY

## Annexure D – Standard Lease

Form: 07L  
Licence: 98M111  
Edition: 1003

**LEASE**  
New South Wales  
Real Property Act 1900

Leave this space clear. Affix additional  
pages to the top left-hand corner.

**PRIVACY NOTE:** Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

**STAMP DUTY**

Office of State Revenue use only

**(A) TORRENS TITLE**

Property leased: if appropriate, specify the part or premises

**(B) LODGED BY**

Document  
Collection  
Box

Name, Address or DX, Telephone, and Customer Account Number if any

CODE

Reference (optional):

**L**

**(C) LESSOR**

The lessor leases to the lessee the property referred to above.

**(D)** Encumbrances (if applicable): 1. .... 2. .... 3. ....

**(E) LESSEE**

**(F)**

**TENANCY:**

- (G)** 1. **TERM** .....  
2. **COMMENCING DATE** .....  
3. **TERMINATING DATE** .....  
4. With an **OPTION TO RENEW** for a period of ..... set out in .....  
5. With an **OPTION TO PURCHASE** set out in .....  
6. Together with and reserving the **RIGHTS** set out in .....  
7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** ..... hereto.  
8. Incorporates the provisions set out in **MEMORANDUM** filed / **LEASE** registered at the Land and Property Management Authority as No. ....  
9. The **RENT** is set out in item / clause ..... of .....

DATE ..... / ..... / .....  
dd mm yyyy

(H) I certify that the lessor, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the lessor.

Signature of witness:

Signature of lessor:

Name of witness:

Address of witness:

*Note: where applicable, the lessor must complete the statutory declaration below.*

I certify that the lessee, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this lease in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the lessee.

Signature of witness:

Signature of lessee:

Name of witness:

Address of witness:

(I) **STATUTORY DECLARATION \***

I .....  
solemnly and sincerely declare that—

1. The time for the exercise of option to renew / option to purchase in expired lease No. .... has ended;
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900.

Made and subscribed at ..... in the State of .....  
on ..... in the presence of—

Signature of witness: ..... Signature of lessor: .....

Name of witness: .....

Address of witness: .....

Qualification of witness: *[tick one]*

☐ Justice of the Peace

☐ Practising Solicitor

☐ Other qualified witness *[specify]* .....

\* As the Land and Property Management Authority may not be able to provide the services of a justice of the peace or other qualified witness, the statutory declaration should be signed and witnessed prior to lodgment.

# ANNEXURE A

## ANNEXURE A

SEE A SOLICITOR ABOUT THIS LEASE

Lessor:

Lessee:

This annexure consists of            pages.

**NOTE:** Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

### SCHEDULE OF ITEMS (continued)

Item 10  
(cls 2.3, 13.1)  
(cl 13.7)

- A.     **The guarantor:**  
B.     **Limit of guarantor's liability:**

Item 11  
(cl 3)

**Additional leased property:**

Item 12  
(cl 4)

**Option to renew**

- A.     Further period of            years from            to  
B.     Further period of            years from            to  
C.     Maximum period of tenancy under this lease and permitted renewals:  
D.     First day option for renewal can be exercised:  
E.     Last day option for renewal can be exercised:

Item 13  
(cl 5)

A.     **Rent**

For the lease period:

From the commencement date  
to the first rent review date:

\$            a year by monthly  
instalments of \$

Afterwards:

At the new yearly rent beginning on each  
review date by monthly instalments of one  
twelfth of the new yearly rent.

For the further period in item 12A:

From the commencement date  
to the first rent review date:  
(for example: Current market rent)  
Afterwards:

At the new yearly rent beginning on each  
review date by monthly instalments of one  
twelfth of the new yearly rent.

.....  
.....  
.....

.....  
.....  
.....

For the further period in item 12B:

From the commencement date  
to the first rent review date:  
(for example: Current market rent)

Afterwards:

At the new yearly rent beginning on each  
review date by monthly instalments of one  
twelfth of the new yearly rent.

Item 13  
(cl 15)

**B. GST**

Clause 15 provides for payment by the lessee of GST unless otherwise here indicated:

Item 14  
(cl 5)

**Outgoings**

A. Share of outgoings:

B. Outgoings –

- (a) local council rates and charges;
- (b) water sewerage and drainage charges;
- (c) land tax;
- (d) insurance;
- (e) all levies and contributions of whatsoever nature determined and/or levied by the owners corporation with the exception of any contribution to a sinking fund or special levy in respect of the strata scheme of which the property forms part (if applicable);

for the land or the building of which the property is part, fairly apportioned to the period of this lease.

Item 15  
(cl 5.1.5)

**Interest rate:** %

Item 16  
(cl 5.4)

**Rent review**

Rent review date	Method of rent review	If Method 1 applies, increase by (the increase should show percentage or amount)
------------------	-----------------------	--

Method 1 is a fixed amount or percentage.

Method 2 is Consumer Price Index.

Method 3 is current market rent.

Method 2 applies unless another method is stated.

Item 17  
(cl 6.1)

**Permitted use:**

Item 18  
(cl 8.1.1)

**Amount of required public liability insurance: \$**

.....

.....

.....

Item 19            **Bank Guarantee**  
(cl 16)

months rent and the lessee's proportion of outgoings increased by the rate of GST (expressed as a percentage) applicable from time to time.

Item 20            **Security Deposit**  
(cl 17)

months rent and the lessee's proportion of outgoings increased by the rate of GST (expressed as a percentage) applicable from time to time.

**Details of strata manager/secretary of the owners corporation (if applicable)**

[Delete if not required]

The following alterations and additions are to be made to the Lease Covenants in Annexure B:

.....  
.....  
.....

.....  
.....  
.....

**ANNEXURE B**

SEE A SOLICITOR ABOUT THIS LEASE

Lessor:

Lessee:

This annexure consists of 13 pages.

©2007 COPYRIGHT of the Law Society of New South Wales which has approved this annexure as printed to clause 18. WARNING: Unauthorised reproduction in whole or in part is an infringement of copyright.

**NOTE:** Any alterations and additions to Lease Covenants in Annexure B **must** be made by additional clauses in Annexure A. The printed clauses in Annexure B are to remain in their copyright form without alteration.

**CONTENTS**

CLAUSE	SUBJECT	PAGE	CLAUSE	SUBJECT	PAGE
1	Form of this Lease.....	2	11	Lessor's other Obligations.....	9
2	Parties.....	2	12	Forfeiture and End of Lease .....	9
3	The Property.....	2	13	Guarantee .....	10
4	Lease Period.....	2	14	Exclusions, Notices and Special Clauses.....	10
5	Money .....	3	15	Goods and Services Tax .....	11
6	Use .....	5	16	Bank Guarantee .....	11
7	Condition and Repairs.....	6	17	Security Deposit .....	11
8	Insurance and Damage .....	7	18	Strata Conversion .....	11
9	Access .....	7			
10	Transfer and Sublease .....	8			

**RETAIL LEASE CERTIFICATE**

If section 16 of the *Retail Leases Act 1994* applies to this lease, and the term plus any further terms are less than 5 years (subject to section 16(4)), the term will be extended unless a section 16(3) certificate is given. Sections 16(1) and (2) provide –

- 16(1) The term for which a retail shop lease is entered into, together with any further term or terms provided for by any agreement or option for the acquisition by the lessee of a further term as an extension or renewal of the lease, must not be less than 5 years. An agreement or option is not taken into account if it was entered into or conferred after the lease was entered into.
- 16(2) If a lease is entered into in contravention of this section, the validity of the lease is not thereby affected but the term of the lease is extended by such period as may be necessary to prevent the lease contravening this section.

I certify that:

- I am a solicitor not acting for the lessor;
- Before (or within 6 months after) the lessee entered into this lease –
  - the lessee requested me to give this certificate; and
  - I explained to the lessee the effect of sections 16(1) and (2), and that the giving of this certificate would result in section 16 not applying to this lease.

Date

Signature

NAME (BLOCK LETTERS)

**CLAUSE 1 FORM OF THIS LEASE**

**What are the parts to this lease?**

- 1.1 There are three parts to this lease – a lease form, Annexure A and this annexure.
- 1.2 This lease is a deed even if it is not registered.
- 1.3 A reference in this deed to the schedule is to the schedule of items commencing at item 1 on the lease form and ending with item 20 in Annexure A.

**CLAUSE 2 PARTIES**

**Who are the parties to this lease?**

- 2.1 The lessor is named on page 1 of this lease.
- 2.2 The lessee is named on page 1 of this lease.
- 2.3 The guarantor is named in item 10 in the schedule, if there is a guarantor.
- 2.4 If a party consists of two or more persons, obligations of that party can be enforced against any one or more of them.

**CLAUSE 3 THE PROPERTY**

**What property is leased?**

- 3.1 The property leased is described on page 1 of this lease.
- 3.2 The lessor's fixtures are included in the property leased.
- 3.3 If anything else is leased (such as furniture belonging to the lessor) and is described in item 11 in the schedule it is included in the property.
- 3.4 If the property has facilities and services shared in common with other persons in the same building as the property, clause 11.3.2 applies to those common facilities. The lessee shares the common facilities with the lessor, and with other lessees of the lessor. The lessor can set reasonable rules for sharing these common facilities.

**CLAUSE 4 LEASE PERIOD**

**How long is this lease for?**

- 4.1 This lease is for the period stated in item 1 in the schedule, commences on the date stated in item 2 in the schedule and ends on the date stated in item 3 in the schedule.
- 4.2 If a further period, commencing when this lease ends, is stated in item 12A in the schedule then the lessee has the option to renew this lease for that period.
- 4.3 The lessee can renew this lease more than once if that is stated in item 12B in the schedule. However the period of tenancy under this lease and under any renewal(s) is, in total, not longer than the maximum period stated in item 12C in the schedule.
- 4.4 The lessee can exercise the option only if –
  - 4.4.1 the lessee serves on the lessor a notice of exercise of option not earlier than the first day stated in item 12D in the schedule and not later than the last day stated in item 12E in the schedule;
  - 4.4.2 there is at the time of service no rent or outgoing that is overdue for payment; and
  - 4.4.3 at the time of service all the other obligations of the lessee have been complied with or fully remedied in accordance with the terms of any notice to remedy given by the lessor.

If this lease is extended by legislation, items 12D and 12E in the schedule are adjusted accordingly.

- 4.5 After exercising the option the lessee must continue to pay all rents and outgoing on time and continue to comply with all of the lessee's obligations under this lease. If the lessee does not do so, the lessor may treat any breach as being a breach of the new lease as well as of this lease.



- 4.6 A new lease will be the same as this lease except for –
- 4.6.1 the new rent;
  - 4.6.2 the commencement date and the termination date;
  - 4.6.3 the omission of clauses 4.2, 4.3, 4.4, 4.5 and 4.6 and items 12A and 12B in the schedule in the last lease allowed in item 12 in the schedule;
  - 4.6.4 item 12B becoming item 12A;
  - 4.6.5 adjustment of item 12C in the schedule; and
  - 4.6.6 adjustment of items 12D and 12E in the schedule. The number of days between the dates stated in items 12D and 12E in the schedule of the new lease and the termination date of the new lease and the number of days between each date stated in items 12D and 12E in the schedule of this lease and the termination date of this lease are to correspond.

If the new rent is to be current market rent it will be decided in the same way that current market rent is to be decided under Method 3 stated in clause 5 assuming that this lease and the new lease were one continuous lease and the commencement date of the new lease was a rent review date.

## CLAUSE 5 MONEY

### What money must the lessee pay?

- 5.1 The lessee must pay to the lessor or as the lessor directs –
- 5.1.1 the rent stated in item 13A in the schedule;
  - 5.1.2 the share stated in item 14A in the schedule of those outgoings stated in item 14B in the schedule;
  - 5.1.3 the reasonable cost to the lessor of remedying a default by the lessee;
  - 5.1.4 the reasonable cost to the lessor of dealing with any application by the lessee for the lessor's consent under this lease (whether or not it is given);
  - 5.1.5 interest on these moneys at the rate stated in item 15 in the schedule when payment is more than 14 days overdue, calculated from the due date to the date of payment;
  - 5.1.6 registration fee for registration of this lease at Land and Property Information NSW (payable on delivery to the lessor's solicitor of the executed lease);
  - 5.1.7 stamp duty on this lease (payable on delivery to the lessor's solicitor of the executed lease) if not previously paid by the lessee to the Office of State Revenue;
  - 5.1.8 if the lessee defaults, the lessor's reasonable legal costs relating to the default;
  - 5.1.9 the lessor's reasonable costs and expenses in connection with the preparation of this lease but only that part of those costs and expenses which are permitted to be recovered by a lessor under section 14 and section 45 of the *Retail Leases Act, 1994*; and
  - 5.1.10 GST as provided for in clause 15.
- 5.2 The first month's instalment of rent is to be paid by the commencement date. Each later month's instalment of rent is to be paid in advance.
- 5.3 A payment under clause 5.1.2 must be paid on the next rent day after a request for payment is made by the lessor.
- A request for payment can be made –
- 5.3.1 after the lessor has paid an outgoing; or
  - 5.3.2 after the lessor has received an assessment or account for payment of an outgoing.

If item 14B in the schedule refers to land tax –

- if the property is a strata lot, the relevant land tax is land tax on that lot;
- if the property is not a strata lot but is part of a building, the relevant land tax is land tax on the land on which the building is situated, plus any land of the lessor used or available for use by or for the benefit of lessees conducting business in the building or in connection with trading in the building; and
- in either case, the land tax must be calculated as if the land was the only land owned by the lessor and there was no special trust or non-concessional company involved.

**When and how is the rent to be reviewed?**

- 5.4 The rent is to be reviewed on the rent review dates stated in item 16 in the schedule.
- If this lease is extended by legislation, the rent review dates include each anniversary of the latest rent review date stated in item 16 in the schedule (or if none is stated each anniversary of the commencement date) which falls during the extension.
- 5.5 The lessee must continue to pay rent at the old rate until the new rate is known. After that, the lessee is to pay the new rent from the next rent day. By that rent day the lessee is also to pay any shortfall between the old and new rate for the period since the rent review date. Alternatively, the lessor is to refund to the lessee any overpayment of rent.
- 5.6 There are three different methods described here for fixing the new rent on a rent review date. The method agreed by the lessor and the lessee is stated at item 16 in the schedule. The lessee is entitled to a reduction if the method produces a rent lower than the rent current just before the review date.

**Method 1. By a fixed amount or percentage.**

- 5.7 In this case the rent beginning on each review date will be increased by the percentage or amount stated in item 16 in the schedule.

**Method 2. By reference to Consumer Price Index.**

- 5.8 In this case –
- take the yearly rent as of the last review date or if none, the rent at the commencement date (\$X),
  - divide that rent by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before that date (CPI 1),
  - multiply the result by the Consumer Price Index Number for Sydney (All Groups) for the quarter ended just before the review date (CPI 2).

The product is the new rent for the year beginning on the review date (\$Y), written as a formula –

$$\frac{\$X}{\text{CPI 1}} \times \text{CPI 2} = \$Y$$

- 5.9 The lessor must calculate the new rent after each review date and give the lessee written notice of the new rent.
- 5.10 If the Australian Bureau of Statistics makes a change in the reference base of the index and there is a published co-relation between the old and new base then the published co-relation is to be applied to convert the CPI 1 figure to the new reference base. If there is none then the lessor and the lessee agree to accept the calculations of the lessor's solicitor who must be retained to determine a fair co-relation between the old and the new series of numbers.
- 5.11 If the index used to calculate the new rent is discontinued the lessor may substitute another index that, as nearly as practicable, serves the same purpose and, if there is no such index, then the rent will be fixed by Method 3.

**Method 3. By reference to current market rent.**

- 5.12 In this case the rent is to be the current market rent. This can be higher or lower than the rent payable at the rent review date and is the rent that would reasonably be expected to be paid for the property, determined on an effective rent basis, having regard to the following matters –
- 5.12.1 the provisions of this lease;
  - 5.12.2 the rent that would reasonably be expected to be paid for the property if it were unoccupied and offered for renting for the same or a substantially similar use to which the property may be put under this lease;
  - 5.12.3 the gross rent, less the lessor's outgoings payable by the lessee;
  - 5.12.4 where the property is a retail shop, rent concessions and other benefits that are frequently or generally offered to prospective lessees of unoccupied retail shops; and
  - 5.12.5 the value of goodwill created by the lessee's occupation and the value of lessee's fixtures and fittings are to be ignored.

- 5.13 The lessor or the lessee can inform the other in writing at least 60 days before the rent review date of the rent that the lessor or lessee thinks will be the current market rent at the review date.
- 5.14 If the lessor and the lessee agree on a new rent then that rent will be the new rent beginning on the rent review date and the lessor and the lessee must sign a statement saying so.
- 5.15 If the lessor and the lessee do not agree on the amount of the new rent 30 days before the rent review date, the current market rent will be decided by a valuer appointed under clause 5.16.
- 5.16
- 5.16.1 Unless 5.16.2 applies the lessor and the lessee can either agree upon a valuer or can ask the President of the Law Society of New South Wales to nominate a person who is a licensed valuer to decide the current market rent.
- 5.16.2 Where the property is a retail shop, the valuer appointed must be a specialist retail valuer appointed by agreement of the parties or, failing agreement, by the Administrative Decisions Tribunal.
- 5.17 The valuer will act as an expert not an arbitrator. The lessor and the lessee can each make submissions in writing to the valuer within 14 days after they receive notice of the valuer's appointment but not later unless the valuer agrees.
- 5.18 The valuer's decision is final and binding. The valuer must state how the decision was reached.
- 5.19 If the valuer
- 5.19.1 does not accept the nomination to act; or
- 5.19.2 does not decide the current market rent within 1 month after accepting the nomination; or
- 5.19.3 becomes incapacitated or dies; or
- 5.19.4 resigns,
- then another valuer is to be appointed in the same way.
- 5.20 The lessor and lessee must each pay half the valuer's costs.
- 5.21 If the lessor and lessee do not agree upon a valuer and neither asks for a valuer to be nominated before –
- 5.21.1 the next rent review date passes; or
- 5.21.2 this lease ends without the lessee renewing it; or
- 5.21.3 this lease is transferred after the rent review date with the lessor's consent; or
- 5.21.4 the property is transferred after the rent review date
- then the rent will not change on that rent review date.

## CLAUSE 6 USE

### How must the property be used?

- 6.1 The lessee must –
- 6.1.1 use the property for the purpose stated in item 17 in the schedule and not for any other purpose;
- 6.1.2 open for business at times usual for a business of the kind conducted by the lessee;
- 6.1.3 keep the property clean and dispose of waste properly; and
- 6.1.4 comply with all laws relating to strata schemes and all other laws regulating how the property is used, obtain any consents or licences needed, comply with any conditions of consent, and keep current any licences or registrations needed for the use of the property or for the conduct of the lessee's business there.
- 6.1.5 where the property is a lot in a strata scheme:
- 6.1.5.1 use the lessor's common property only in connection with the use of the property;
- 6.1.5.2 co-operate with all other permitted users of the common property;
- 6.1.5.3 comply with so many of the provisions of the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973* and the by-laws and all lawful orders, motions and directives under these Acts as may be applicable to the exercise of the lessee's rights and obligations under this lease.

- 6.2 The lessor can consent to a change of use and cannot withhold consent unreasonably.
- 6.3 The lessee must not –
  - 6.3.1 do anything that might invalidate any insurance policy covering the property or that might increase the premium unless the lessor consents in which case the lessee must pay the increased premium; or
  - 6.3.2 use the property as a residence or for any activity that is dangerous, offensive, noxious, illegal or immoral or that is or may become a nuisance or annoyance to the lessor or to the owner or occupier of any neighbouring property; or
  - 6.3.3 hold any auction, bankrupt or fire sale in the property; or
  - 6.3.4 display signs or advertisements on the outside of the property, or that can be seen from the outside, unless the lessor consents (but the lessor cannot withhold consent unreasonably);
  - 6.3.5 overload the floors or walls of the property; or
  - 6.3.6 without the prior written consent of the lessor and/or the owners corporation, use the common property for any purpose other than for access to and egress from the property.

## CLAUSE 7 CONDITION AND REPAIRS

### Who is to repair the property?

- 7.1 The lessor must –
  - 7.1.1 maintain in a state of good condition and serviceable repair the roof, the ceiling, the external walls and external doors and associated door jambs, and the floors of the property and must fix structural defects;
  - 7.1.2 maintain the property in a structurally sound condition; and
  - 7.1.3 maintain essential services.
- 7.2 The lessee must otherwise maintain the property in its condition at the commencement date and promptly do repairs needed to keep it in that condition but the lessee does not have to –
  - 7.2.1 alter or improve the property; or
  - 7.2.2 fix structural defects; or
  - 7.2.3 repair fair wear and tear.
- 7.3 The lessee must also –
  - 7.3.1 reimburse the lessor for the cost of fixing structural damage caused by the lessee, apart from fair wear and tear;
  - 7.3.2 maintain and decorate the shop front if the property has one;
  - 7.3.3 decorate the inside of the property in the last 3 months of the lease period (however it ends) – ‘decorate’ here means restoring the surfaces of the property in a style and to a standard of finish originally used e.g. by repainting;
  - 7.3.4 where the property is a lot in a strata scheme:
    - 7.3.4.1 meet the cost of all damage to the common property occasioned by the lessee or any invitee or licensee of the lessee; and
    - 7.3.4.2 permit the owners corporation, temporarily, to close any part of the common property for the purpose of making and effecting repairs to it.
- 7.4 If an authority requires work to be done on the property and it is structural work or work needed to make the property safe to use then the lessor must do the work unless it is required only because of the way the lessee uses the property. But if it is any other work or is required only because of the way the lessee uses the property then the lessee must do the work.
- 7.5 If the lessee fails to do any work that the lessee must do the lessor can give the lessee a notice in writing stating what the lessee has failed to do. After the notice is given the lessee must –
  - 7.5.1 do the work immediately if there is an emergency; and
  - 7.5.2 do the work promptly and diligently in any other case.

If the lessee does not do the work, the lessor can do it and the lessee must reimburse the lessor for the cost of the work.

- 7.6 The lessee must not make any structural alterations to the property. Any other alterations require the lessor's consent in writing (but the lessor cannot withhold consent unreasonably).

## CLAUSE 8 INSURANCE AND DAMAGE

### What insurances must the lessee take out?

- 8.1 The lessee must keep current an insurance policy covering –
- 8.1.1 liability to the public in an amount not less than the amount stated in item 18 in the schedule (for each accident or event); and
  - 8.1.2 damage or destruction from any cause to all plate glass in the windows and other portions of the property

and must produce to the lessor, upon request, the policy and the receipt for the last premium.

### What happens if the property is damaged?

- 8.2 If the property or the building of which it is part is damaged (a term which includes destroyed) –
- 8.2.1 the lessee is not liable to pay rent, or any amount payable to the lessor in respect of outgoings and other charges, that is attributable to any period during which the property cannot be used under this lease or is inaccessible due to that damage;
  - 8.2.2 if the property is still useable under this lease but its useability is diminished due to the damage, the lessee's liability for rent and any amount in respect of outgoings attributable to any period during which useability is diminished is reduced in proportion to the reduction in useability caused by the damage;
  - 8.2.3 if the lessor notifies the lessee in writing that the lessor considers that the damage is such as to make its repair impracticable or undesirable, the lessor or the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the other and no compensation is payable in respect of that termination;
  - 8.2.4 if the lessor fails to repair the damage within a reasonable time after the lessee requests the lessor to do so the lessee can terminate this lease by giving not less than 7 days notice in writing of termination to the lessor; and
  - 8.2.5 nothing in clause 8.2 affects any right of the lessor to recover damages from the lessee in respect of any damage or destruction to which the clause applies.

## CLAUSE 9 ACCESS

### What are the lessor's rights of access to the property?

- 9.1 The lessee must give the lessor (or anyone authorised in writing by the lessor) access to the property at any reasonable time for the purpose of –
- 9.1.1 inspecting the condition of the property, or how it is being used; or
  - 9.1.2 doing anything that the lessor can or must do under this lease or must do by law; or
  - 9.1.3 viewing the property as a valuer, prospective buyer or mortgagee; or
  - 9.1.4 fixing a notice in a reasonable position on the outside of the property saying that it is for sale; or
  - 9.1.5 viewing the property as a prospective lessee not earlier than 6 months before the lease period ends; or
  - 9.1.6 fixing a notice not earlier than 6 months before the lease period ends in a reasonable position on the outside of the property saying that it is to let; or
  - 9.1.7 inspecting, cleaning or repairing another property or any services to another property.
- 9.2 The lessor must give the lessee at least 2 days written notice for access (except in an emergency). The day of the giving of the notice and any Saturday, Sunday or public holiday on which the property is not open for business are not counted.
- 9.3 The lessor must promptly make good any damage caused to the property and to any of the lessee's belongings which results from exercising these rights.
- 9.4 The lessee must give to the lessor a copy of any notice relating to the property or relating to any neighbouring property immediately after receiving the notice.

## CLAUSE 10 TRANSFER AND SUB-LEASE

### Can this lease be transferred or the property shared or sub-let?

- 10.1 The lessee must not transfer this lease without consent.
- 10.2 The lessor can withhold consent only if –
  - 10.2.1 the proposed transferee proposes to change the use to which the property is put; or
  - 10.2.2 where the property is a retail shop, the proposed transferee has financial resources or retailing skills inferior to those of the proposed transferor and otherwise the proposed transferee has financial resources or business experience inferior to those of the proposed transferor; or
  - 10.2.3 the lessee has not complied with clause 10.3 and, where the property is a retail shop, clause 10.4.
- 10.3 A request for the lessor's consent to a transfer of lease must be made in writing and the lessee must provide the lessor with such information as the lessor may reasonably require concerning the financial standing and business experience of the proposed transferee.
- 10.4 Where the property is a retail shop, before requesting the consent of the lessor to a proposed transfer of this lease, the lessee must furnish the proposed transferee with a copy of any disclosure statement given to the lessee in respect of this lease, together with details of any changes that have occurred in respect of the information contained in the disclosure statement (being changes of which the lessee was aware or could reasonably be expected to be aware). For the purpose of enabling the lessee to comply with this obligation, the lessee can request the lessor to provide the lessee with a copy of the disclosure statement concerned and, if the lessor is unable or unwilling to comply with such a request within 14 days after it is made, this clause 10.4 does not apply.
- 10.5 Where the lessee has complied with clause 10.3 and where required to do so clause 10.4, and the lessor has not within 42 days or where the *Retail Leases Act 1994* applies 28 days after the request was made or the lessee has complied with paragraphs 41(a) and 41(b) of that Act, whichever is the later, given notice in writing to the lessee either consenting or withholding consent, the lessor is taken to have consented.
- 10.6 The lessee has to pay in connection with any consent the lessor's reasonable legal costs, the reasonable costs of obtaining any mortgagee's consent, the stamp duty and the registration fee for the transfer.
- 10.7 Where the property is a retail shop, the lessee can sub-let, grant a licence or concession, share or part with the possession of the whole or any part of the property or mortgage or otherwise charge or encumber the lessee's estate or interest in this lease only with the written consent of the lessor which can be refused in the lessor's absolute discretion. Otherwise, the lessee cannot do any of these things.

## CLAUSE 11 LESSOR'S OTHER OBLIGATIONS

### What are the lessor's other obligations?

- 11.1 So long as the lessee does all the things that must be done by the lessee under this lease the lessor must allow the lessee to possess and use the property in any way permitted under this lease without interference from the lessor, or any person claiming under the lessor or having superior title to the title of the lessor.
- 11.2 The lessor must pay all outgoing for the land or the building of which the property is part when they fall due.
- 11.3 If the property is part of a building owned or controlled by the lessor –
  - 11.3.1 the lessor must maintain in reasonable structural condition all parts of the building that the lessee can use under this lease; and
  - 11.3.2 if the property has facilities and service connections shared in common with other persons the lessor must –
    - 11.3.2.1 allow reasonable use of the facilities and service connections including –
      - the right for the lessee and other persons to come and go to and from the property over the areas provided for access;
      - access by the lessee to service connections; and
      - the right for the lessee's customers to park vehicles in any area set aside for customer parking, subject to any reasonable rules made by the lessor.
    - 11.3.2.2 maintain the facilities and service connections in reasonable condition.

- 11.4 Where registration is necessary for the validity of this lease, the lessor must ensure that this lease is registered.
- 11.5 If a consent is needed for this lease, from someone such as a mortgagee or head lessor of the property, then the lessor must get the consent.

## CLAUSE 12 FORFEITURE AND END OF LEASE

### When does this lease end?

- 12.1 This lease ends –
  - 12.1.1 on the date stated in item 3 in the schedule; or
  - 12.1.2 if the lessor lawfully enters and takes possession of any part of the property; or
  - 12.1.3 if the lessor lawfully demands possession of the property.
- 12.2 The lessor can enter and take possession of the property or demand possession of the property if –
  - 12.2.1 the lessee has repudiated this lease; or
  - 12.2.2 rent or any other money due under this lease is 14 days overdue for payment; or
  - 12.2.3 the lessee has failed to comply with a lessor's notice under section 129 of the *Conveyancing Act 1919*; or
  - 12.2.4 the lessee has not complied with any term of this lease where a lessor's notice is not required under section 129 of the *Conveyancing Act 1919* and the lessor has given at least 14 days written notice of the lessor's intention to end this lease.
- 12.3 When this lease ends, unless the lessee becomes a lessee of the property under a new lease the lessee must –
  - 12.3.1 return the property to the lessor in the state and condition that this lease requires the lessee to keep it in; and
  - 12.3.2 have removed any goods and anything that the lessee fixed to the property and have made good any damage caused by the removal.

Anything not removed becomes the property of the lessor who can keep it or remove and dispose of it and charge to the lessee the cost of removal, making good and disposal.
- 12.4 If the lessor allows the lessee to continue to occupy the property after the end of the lease period (other than under a new lease) then –
  - 12.4.1 the lessee becomes a monthly lessee and must go on paying the same rent and other money in the same way that the lessee had to do under this lease just before the lease period ended (apportioned and payable monthly);
  - 12.4.2 the monthly tenancy will be on the same terms as this lease, except for –
    - clause 4;
    - clauses 5.4 to 5.21 inclusive; and
    - clause 6.2 unless consent has previously been given;
  - 12.4.3 either the lessor or the lessee can end the monthly tenancy by giving, at any time, 1 month written notice to the other expiring on any date; and
  - 12.4.4 anything that the lessee must do by the end of this lease must be done by the end of the monthly tenancy.
- 12.5 Essential terms of this lease include –
  - 12.5.1 the obligation to pay rent not later than 14 days after the due date for payment of each periodic instalment (and this obligation stays essential even if the lessor, from time to time, accepted late payment);
  - 12.5.2 the obligations of the lessee in clause 5.1.2 (dealing with outgoing);
  - 12.5.3 the obligations of the lessee in clause 6.1 (dealing with use);
  - 12.5.4 the obligations of the lessee in clause 7 (dealing with repairs);
  - 12.5.5 the obligations of the lessee in clause 10 (dealing with transfer and sub-lease); and
  - 12.5.6 the obligations of the lessee in clause 15 (dealing with GST).

- 12.6 If there is a breach of an essential term the lessor can recover damages for losses over the entire period of this lease but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 12.7 The lessor can recover damages even if –
- 12.7.1 the lessor accepts the lessee's repudiation of this lease; or
  - 12.7.2 the lessor ends this lease by entering and taking possession of any part of the property or by demanding possession of the property; or
  - 12.7.3 the lessee abandons possession of the property; or
  - 12.7.4 a surrender of this lease occurs.

## CLAUSE 13 GUARANTEE

### What are the obligations of a guarantor?

- 13.1 This clause applies if a guarantor of the lessee is named in item 10A in the schedule and has signed or executed this lease or, if this lease is a renewal of an earlier lease, the earlier lease.
- 13.2 The guarantor guarantees to the lessor the performance by the lessee of all the lessee's obligations (including any obligation to pay rent, outgoings or damages) under this lease, under every extension of it or under any renewal of it or under any tenancy and including obligations that are later changed or created.
- 13.3 If the lessee does not pay any money due under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must pay that money to the lessor on demand even if the lessor has not tried to recover payment from the lessee.
- 13.4 If the lessee does not perform any of the lessee's obligations under this lease, under any extension of it or under any renewal of it or under any tenancy the guarantor must compensate the lessor even if the lessor has not tried to recover compensation from the lessee.
- 13.5 If the lessee is insolvent and this lease or any extension or renewal of it is disclaimed the guarantor is liable to the lessor for any damage suffered by the lessor because of the disclaimer. The lessor can recover damages for losses over the entire period of this lease or any extension or renewal but must do every reasonable thing to mitigate those losses and try to lease the property to another lessee on reasonable terms.
- 13.6 Even if the lessor gives the lessee extra time to comply with an obligation under this lease, under any extension of it or under any renewal of it or under any tenancy, or does not insist on strict compliance with the terms of this lease or any extension of it or renewal of it or of any tenancy, the guarantor's obligations are not affected.
- 13.7 If an amount is stated in item 10B in the schedule the guarantor's liability under this clause is limited to that amount.
- 13.8 The terms of this guarantee apply even if this lease is not registered, even if any obligation of the lessee is only an equitable one, and even if this lease is extended by legislation.

## CLAUSE 14 EXCLUSIONS, NOTICES AND SPECIAL CLAUSES

- 14.1 No covenant or power is implied in this lease by section 84 or 85 of the *Conveyancing Act 1919*.
- 14.2 A document under or relating to this lease is –
- 14.2.1 served if it is served in any manner provided in section 170 of the *Conveyancing Act 1919*; and
  - 14.2.2 served on the lessee if it is left at the property.
- 14.3 This lease is subject to any legislation that cannot be excluded (for example, the *Retail Leases Act 1994*).
- 14.4 In this lease, 'retail shop' means premises to which the *Retail Leases Act 1994* applies.
- 14.5 In this lease 'Director General' has the same meaning as in the *Retail Leases Act 1994*.



**CLAUSE 15 GOODS AND SERVICES TAX**

Unless item 13B in the schedule has been completed in a way that indicates that this clause is not to apply:

- 15.1 As consideration in whole or in part for a taxable supply the person receiving the supply must pay to the party making the supply an additional amount equal to the amount of GST payable on the supply.
- 15.2 To the extent that the lessee is required to reimburse the lessor in whole or in part for outgoings incurred by the lessor, for the purposes of this lease the amount of the outgoings must be reduced by the amount of any credit or refund of GST to which the lessor is entitled as a result of incurring outgoings.
- 15.3 Outgoings in item 14B in the schedule are to be calculated after deducting any input tax credit to which the lessor is entitled.
- 15.4 For the purposes of this lease GST means a tax in the nature of a supply of goods and services tax levied or imposed by the Commonwealth of Australia.

**CLAUSE 16 BANK GUARANTEE**

- 16.1 If a number of months appears in item 19 in the schedule, clauses 16.2 to 16.5 apply.
- 16.2 On or before the commencement date of this lease the lessee will deliver to the lessor a guarantee by a bank trading in the State of New South Wales in the form of an unconditional and irrevocable undertaking to pay drawn in favour of the lessor (unlimited as to time) in a form acceptable to the lessor and for an amount equivalent to the number of months referred to in item 19 in the schedule.
- 16.3 The lessor is entitled to claim under the guarantee an amount equal to any moneys due but unpaid by the lessee to the lessor under this lease.
- 16.4 The lessee agrees to vary the amount of the guarantee immediately upon each rent review so that the amount at all times represents the equivalent of the number of months referred to in the schedule.
- 16.5 The lessor will deliver the guarantee (or so much of it as is then held by the lessor) to the lessee on the last of:
  - 16.5.1 the terminating date of this lease;
  - 16.5.2 the expiry date of any holding over under this lease; and
  - 16.5.3 the date that the lessee has no further obligations under this lease or at law.

**CLAUSE 17 SECURITY DEPOSIT**

- 17.1 If an amount or a number of months appears in item 20 in the schedule, clauses 17.2 to 17.6 apply.
- 17.2 On or before the commencement date of this lease the lessee will deliver the security deposit to the lessor.
- 17.3 The lessor is entitled to deduct from the security deposit an amount equal to any monies due but unpaid by the lessee to the lessor under this lease.
- 17.4 Where the property is a retail shop, the security deposit will be held in accordance with Section 16C of the *Retail Leases Act 1994*. The lessee will not make an application to the Director General seeking the return of the security deposit (or so much of it as is then held by the Director General) until the later of:
  - 17.4.1 the terminating date of this lease;
  - 17.4.2 the expiry date of any holding over under this lease; and
  - 17.4.3 the date that the lessee has no further obligations under this lease or at law.
- 17.5 Where the property is other than a retail shop the security deposit (or so much of it as is then held by the lessor) will be returned to the lessee on the later of the dates as specified in clause 17.4.
- 17.6 The lessee agrees to vary the amount of the security deposit immediately upon each rent review so that it represents the equivalent of the number of months referred to in the schedule.

**CLAUSE 18 STRATA CONVERSION**

- 18.1 "Owners corporation", "owner", "strata scheme", "lot" and "parcel" where used in this lease have the meanings given under the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973*.

- 18.2 "Strata Acts" means the *Strata Schemes Management Act 1996* and the *Strata Schemes (Freehold Development) Act 1973*, and includes any amending Acts, rules, regulations, ordinances, by-laws, statutory instruments, orders or notices now or hereafter made under those Acts.
- 18.3 "Strata conversion" means a subdivision of the property under the *Strata Schemes (Freehold Development) Act 1973* or the *Community Land Development Act 1989* or the *Community Land Management Act 1989* or other legislation permitting such subdivision.
- 18.4 Strata Titles
- 18.4.1 Lessee consents to registration of strata plan
- 18.4.1.1 By its entry into this lease the lessee acknowledges that the lessor can register a strata plan, a strata schemes plan, a strata plan of subdivision, a strata plan of consolidation or a building alteration plan insofar as any of these may relate to the property, the Building or the land. The lessor will provide the lessee with copies of the proposed strata plan and associated documentation for the lessee's approval, which approval will not be unreasonably withheld.
- 18.4.1.2 Provided the lessee consents to the strata conversion as per clause 18.4.1.1 then within 7 days of written request by the lessor the lessee will sign and return to the lessor any consents or other documents necessary to enable the lessor to carry out the strata conversion and will make no objection or claim for compensation in relation to the strata conversion.
- 18.4.2 Compliance with the Strata Acts and by-laws:
- 18.4.2.1 **(Covenant):** The lessee and any and all persons acting by, through or under it or with its authority express or implied shall comply with so many of the provisions of the Strata Acts and the by-laws and all lawful orders, motions and directives under the Strata Acts as may be applicable to the exercise of the lessee's rights and obligations under the provisions elsewhere contained in this lease.
- 18.4.2.2 **Not to prejudice interests of owners corporation.** Without the prior written consent of the owners corporation, the lessee shall not do any act, matter or thing under the exercise of its rights and obligations elsewhere contained in this lease or permit or allow any act, matter or thing to be done which shall or may:
- increase the rate of premium payable by the owners corporation under any policy of insurance taken out by the owners corporation; or
  - invalidate, avoid or suspend the operation of any such policy of insurance or otherwise prejudice the owners corporation rights under any such policy.
- 18.4.2.3 Upon the occurrence of any of the matters previously referred to the lessee shall:
- pay to the lessor or such other person responsible for payment any amounts payable to the owners corporation as a consequence of any such matters;
  - pay to the lessor for and on behalf of the owners corporation any amounts payable by the owners corporation as a consequence of any such matters and not the subject of clause 18.4.2.2; and
  - pay to the lessor for and on behalf of the owners corporation the amount of any and all losses and damages arising from the occurrence of any such matters.
- 18.4.2.4 **(Indemnity):** The lessee shall indemnify the lessor for any loss or damage suffered by the lessor if the lessee or the lessee's employees fail to comply with the obligations as to conduct imposed upon the lessee or the lessee's employees by this lease or by reason of the Strata Acts.
- 18.4.3 If the strata conversion occurs:
- 18.4.3.1 any reference in this lease will be deemed to be a reference to the buildings comprised in the registered plan or plans of which the property forms part;
- 18.4.3.2 any levies or other monies payable to the owners corporation will be payable by the lessee with the exception of any contribution to a sinking fund or special levy; and
- 18.4.3.3 this lease will be deemed to be amended in any respect that is necessary to ensure that this lease reflects that the strata conversion has been carried out.

**IMPORTANT NOTES**

The following notes are for guidance and do not form part of this lease.

If you are a lessor, a solicitor will prepare this lease for you.

If you are a lessee, a solicitor can advise you about it.

1. This document creates legal rights and legal obligations.
2. Failure to register a lease can have serious consequences.
3. If an option for renewal is not exercised at the right time it will be lost.
4. The lessee can exercise an option for renewal even if there has been a breach of this lease in a case where section 133E of the *Conveyancing Act 1919* applies. The lessor must give a prescribed notice within 14 days after the option is exercised if the lessor wants to rely on the breach to prevent the exercise of the option.
5. The Law Society of New South Wales is not to be responsible for any loss resulting from the use of this lease as printed whether authorised or not.

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I certify that this and the preceding twelve pages are in exactly the same wording as Annexure B of the copyright Law Society Lease.

.....  
Solicitor for the lessor

JOHNSON WINTER & SLATTERY

## Execution

**EXECUTED** as an agreement

Executed by Inner West Council in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:



Director signature

ELIZABETH RICHARDSON  
DEPUTY GENERAL MANAGER

Director full name  
(BLOCK LETTERS)



Director/Secretary signature

BROOKE MARTIN

Director/Secretary full name  
(BLOCK LETTERS) witness

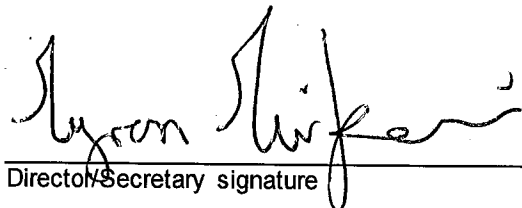
Executed by The Yard 120C Pty Ltd in  
accordance with section 127 of the  
*Corporations Act 2001* (Cth) by:



Director signature

Rick Timperi

Director full name  
(BLOCK LETTERS)



Director/Secretary signature

TYRON TIMPERI

Director/Secretary full name  
(BLOCK LETTERS)