

9.7. 287 Miller Street Cammeray - joint Community Housing project - project completion and transfer arrangements

AUTHOR	Risha Joseph, Senior Property Officer
ENDORSED BY	Olena Tulubinska, Director Corporate Services Marcelo Occhiuzzi, Director Planning and Environment
ATTACHMENTS	1. Project Cost and investment summary [9.7.1 - 4 pages] 2. Report to Council 10.07.2023 [9.7.2 - 6 pages] 3. Development Management Agreement DMA - 287 Miller Street Cammeray [9.7.3 - 86 pages]
CSP LINK	Outcome 7 – Housing that meets the needs of a growing population H1. Support the delivery of affordable and diverse housing H2. Support the delivery of additional dwellings to meet housing targets

PURPOSE:

The purpose of this report is to provide Council with an update on the progress of the community housing development at 287 Miller Street Cammeray, and to seek approval for the Chief Executive Officer to be granted delegated authority to execute and finalise all necessary legal instruments associated with the project.

EXECUTIVE SUMMARY:

- On 23 September 2019, Council considered a report to address affordable housing needs with Link Wentworth Housing in relation to a project to redevelop 287 Miller Street, Cammeray. Council received progressive reports between 2019 and 2023 in relation to the revised design, updated cost estimates, and clarification of the funding required to determine Council's ownership share. Council resolved to maintain its original contribution of \$3,089,831 from the Affordable Housing Reserve, securing a 33% share and authorising the Chief Executive Officer to finalise the Development Management Agreement (DMA) with Link Wentworth Housing.
- The DMA (dated 8/01/2024), sets out the roles, responsibilities, financial contributions, ownership shares, and future lease arrangements between North Sydney Council and Link Wentworth Housing for the delivery of the project at 287 Miller Street, Cammeray. It confirms that Link Wentworth Housing was appointed to manage and construct the works, and that upon completion the Landlords will grant, and the Tenant will accept, a lease in accordance with the agreed terms.
- The project reached Practical Completion on 6 November 2025, satisfying all construction obligations under the DMA and complying with the 24-month sunset clause. Council's contribution of \$3,089,831 (plus GST) was paid to Link Wentworth Housing in two instalments, 80% during construction and the final 20% after completion.

- Practical Completion has triggered several mandatory post-delivery actions, including securing approvals for funding from Housing Australia and the NSW Department of Communities and Justice, and finalising the transfer documentation required to implement the new ownership structure and lease arrangements.
- To affect the transfer of Council's and Link Wentworth Housing's respective interests, Council must now grant consent to a series of dealings. These include the execution of the Deed of Transfer relating to the transfer of shares, commencement, and subsequent assignment of the new 49-year lease, and approval of any associated leasehold mortgage.
- Council approval is also required to delegate authority to the Chief Executive Officer to execute all necessary documentation to finalise these dealings.

RECOMMENDATION:

1. THAT Council note the completion of the community housing project at 287 Miller Street, Cammeray.

2. THAT Council:

- (a) approve the execution of the Deed of Transfer required under Clause 12 of the Development Management Agreement to give effect to the revised ownership shares between North Sydney Council (33%) and Link Wentworth Housing (67%) and authorise the amendment of the Certificate of Title accordingly.
- (b) formally approve the 49-year Lease which commenced on 7 November 2025, as deemed granted under Clause 13 of the Development Management Agreement.
- (c) as joint Landlord, grant consent to the assignment of the Lease from Link Wentworth Housing Limited to Link Wentworth Cammeray Limited and approve the execution of the Deed of Consent and Assignment of Lease.
- (d) grant consent to the subsequent transfer of Link Wentworth Housing's 67% ownership share to Link Wentworth Cammeray Limited.
- (e) note that following the transfer of the shares in (d), above, Link Wentworth Cammeray and NSC will be registered on title as tenants in common and Council grant consent to the new lease between NSC and Link Wentworth Cammeray as Landlords and Link Wentworth Cammeray as Lessee.
- (f) grant consent, as Landlord, to the registration of a leasehold mortgage by Link Wentworth Cammeray for the purposes of securing funding from Housing Australia and the NSW Department of Communities and Justice.
- (g) That Council grant delegated authority to the Chief Executive Officer to negotiate, finalise, and execute all legal instruments necessary to give effect to the transfer and the completion of all associated dealings, and to apply the common seal where required.

Background

1. Previous Management and Share Structure

On 21 June 1993, a Deed of Agreement was entered into between the former NSW Land and Housing Corporation, North Sydney Council (NSC), and the former Community Housing Lower North Shore Limited. Under the Deed, the parties agreed to provide housing for single aged pensioners on low to moderate income at the commencement of their tenancies.

As part of the then Local Government and Community Housing Program, each party financially contributed towards the development of the project, resulting in the title of the property being registered in their names as tenants in common.

The previous financial contributions and equitable shares are outlined below.

Name	Contribution	Reasons for Contribution	Ratio/Share	Percentage of Share Ownership
New South Wales Land and Housing Corporation	\$293,950 (the Grant)	Towards the purchase, refurbishment, and modification of the dwelling	$\frac{5879}{7279}$	80.78%
North Sydney Council	\$50,000	Towards the cost of refurbishment	$\frac{1000}{7279}$	13.74%
Community Housing Lower North Shore Limited (now Link Wentworth Housing)	\$20,000	Towards the cost of refurbishment of the property	$\frac{400}{7279}$	5.5%

Community Housing Lower North Shore was appointed to manage the property, leading to the formalisation of a 25-year lease between the NSW Land and Housing Corporation, NSC, and Community Housing Lower North Shore as Lessors, and Community Housing Lower North Shore as Lessee. That lease commenced on 22 December 1993 and expired on 21 December 2018.

On 31 May 2019, by mutual agreement with Council, the NSW Land and Housing Corporation transferred its ownership interests to Link Wentworth Housing (previously known as Community Housing Lower North Shore), increasing Link Wentworth Housing's share to 6,279/7279 (86.27%).

Following the transfer, on 24 June 2019, Council and Link Wentworth Housing entered into a Deed of Agreement, as Landlords, and consented to Link Wentworth Housing to continue managing the property under the hold-over provisions of the previous lease, (Clause 16), which expired on 21 December 2018.

2. Reports to Council

The following series of reports were presented to Council between 2019 and 2023. These reports provided updates on funding availability, design development, revised cost estimates, tender outcomes, and implications for Council's ownership share in the project. They kept Council informed of the progress that shaped the delivery of the community housing project.

Together, these reports form the basis for the current recommendations and the request for delegated authority for the CEO to finalise the associated legal and contractual documentation.

3. Commencement of the Project

On 23 September 2019, Council considered a report outlining the affordable housing needs in North Sydney at that time. The report also assessed options for the most effective use of the remaining balance in the Affordable Housing Reserve, which totalled \$4,381,105. Council resolved:

- 1. THAT Council explore with its approved Community Housing Provider options for increasing the number of social housing beds in North Sydney by utilising the capital funds accumulated for this purpose.*
- 2. THAT at the next Quarterly Budget Review Council consider that an amount of \$4,381,105 be allocated to this project from funds collected for this purpose.*
- 3. THAT the outcome of any improved or additional asset being purchased with these funds includes the stipulation that Council holds a majority share of the title.*
4. THAT this report be referred to Council's Strategic Planning staff undertaking the Local Housing Strategy to ensure consistency of reporting on key indicators.

On 28 September 2020, Council considered a report following a proposal by Council's Community Housing Provider, Link Wentworth Housing that would meet Council's requirements and raise Council's current minority share from 13.74% to 51%, thereby satisfying part 3 of the above resolution.

Prior to this report, Council's independent valuer valued the premises at \$1,850,000. The Valuer commented that the premises were dilapidated and of little economic value. Based on this assessment and the identified affordable housing needs at the time, Council endorsed a recommendation that a portion of the Affordable Housing Reserve be allocated to fund a new-generation boarding house in North Sydney, with the remaining funds to be utilised for the purchase of a property to support women escaping domestic and family violence:

- 1. THAT Council enter into an Agreement with Link Housing for Council to acquire a majority share of the property referred to in this report – 287 Miller Street, Cammeray.*
- 2. THAT Council make a monetary contribution equivalent to its ownership share from*

the Affordable Housing reserve for the establishment of the 11 new studio apartments referred to in this report.

3. THAT the General Manager (or Delegate) be authorised to finalise the contribution and equity share, subject to the constraints above, to ensure that Council obtains fair value for its contribution.

4. THAT the property continues to be managed as part of the North Sydney Council Local Housing Program Property Management Agreement, 31 October 2018.

5. THAT Council staff prepare a report on the options available to better meet the projected demands for Affordable Housing.

4. Development Consent (DA 335/20)

Following the lodgement of Development Application 335/20, Link Wentworth Housing, received a Notice of Determination from Council in July 2021 with a revised project design. The updated design delivered substantial improvements compared with the original proposal, including the addition of one extra studio, increased unit sizes to enhance circulation and accommodate more functional furniture layouts, and an increase in Disability Discrimination Act-compliant units to three, providing improved accessibility for residents with mobility challenges. The revised design also proposed that two units be dedicated to supporting women escaping domestic and family violence.

On 28 March 2022, Council considered a report which provided updated project costings prepared by Link Wentworth Housing's Quantity Surveyor. These costings were based on the revised development application design and the Notice of Determination issued in July 2021. The report identified that the projected costs had increased due to the design amendments requested through the assessment process, as well as broader COVID-19 related supply chain impacts affecting both labour and material prices. Allowances were consequently adjusted to incorporate price escalation to the midpoint of project delivery, together with an updated construction contingency. Full details of the revised costings are outlined in the Link Wentworth Housing briefing paper dated 10 March 2021, forming Attachment 1 to this report. Council resolved:

1. THAT Council's total contribution towards the construction of a New Generation Boarding house which will include two units for women escaping domestic and family violence, be capped at a maximum contribution of \$3,089,831 from the Affordable Housing Reserve to achieve a 51% majority share.

2. THAT the Development Agreement between Council and Link Wentworth include clauses ensuring that costs overrun must be funded and borne in full by Link Wentworth at their sole risk and underruns shall be proportionately refunded to the Landlord (North Sydney Council) upon Practical Completion.

5. Tender

In March 2023, Council and Link Wentworth Housing completed the tender process for the construction of the project. The most competitive tendered price was significantly higher than the pre-tender estimate.

The report to Council dated 10 July 2023 (Attachment 2) provided an analysis explaining why the additional investment to maintain a 51% ownership share was not essential to achieve the project objectives.

Previous reports had endorsed Council's intention to secure a 51% ownership share in the property. Based on the accepted tender price of \$8,273,009, a 51% ownership contribution would require Council to fund \$4,908,579. This represented an additional \$1,818,748 above Council's previously endorsed commitment of \$3,089,831 (as resolved on 28 March 2022).

A contribution of \$3,089,831 corresponds to a 33% ownership share. Council's current ownership share is 13.74%. Having considered the justification outlined in the 10 July 2023 report, which concluded that the further investment of \$1,818,748 was not essential, Council resolved in part:

- 1. THAT Council endorse Option 1 to finalise a development agreement with Link Wentworth Housing to pursue the construction and delivery of the community housing project at 287 Miller Street, Cammeray which represents a total contribution of \$3,089,831 to be sourced from Council's affordable housing contribution restricted reserve.*
2. THAT the General Manager be issued with delegated authority to finalise the Development Agreement with Link Wentworth as the basis to deliver the housing project in partnership with Council.

Report

Development Management Agreement

The Development Management Agreement (DMA, Attachment 3) was finalised on 8 January 2024. It governed the relationship between the following parties on the project delivery, responsibilities, the parties' financial contributions, ownership shares, and the lease arrangements upon completion of the project:

Link Wentworth Housing Limited ABN 62 003 084 928 and North Sydney Council ABN 32 353 260 317 (Landlord)

and

Link Wentworth Housing Limited ABN 62 003 084 928 (Developer)

and

Link Wentworth Housing Limited ABN 62 003 084 928 (Tenant)

Recitals

The following recitals provide the contextual framework for the agreement, outlining the respective roles, responsibilities, and commitments of the parties involved in the development and future leasing of the property. They summarise the ownership of the land, the appointment of the development contractor, the arrangements for construction, the

intention to grant and accept a lease, and the agreed financial contributions toward the delivery of the project.

- A. The Landlord is the owner of the Land.*
- B. Under this agreement, the Landlord appoints the Developer as its development contractor and the Developer undertakes to the Landlord that the Developer will procure and carry out the Landlord's Works subject to the terms set out in this agreement.*
- C. The Developer will enter into the Construction Contract with the Builder to design, construct, fit out and complete the Landlord's Works in accordance with this agreement.*
- D. The Landlord has agreed to grant the Lease to the Tenant and the Tenant has agreed to accept the Lease from the Landlord on the Commencement Date and subject to the terms of this agreement.*
- E. The Landlord and Developer have agreed to make financial contributions to the development in accordance with the terms of this agreement.*

Completion of Project

The construction phase of the project has now concluded, with the Private Certifier issuing the Certificate of Practical Completion on 6 November 2025. All construction-related obligations under the Development Management Agreement have been satisfied. Notably, the works were completed within the timeframe required by the sunset clause, which stipulates delivery within 24 months of the Agreement dated 8 January 2024.

Transfer: Various matters

With construction now complete, several post-delivery actions must be progressed to ensure full compliance with the obligations set out in the Development Management Agreement between Link Wentworth Housing and North Sydney Council. In particular, Link Wentworth Housing is required to satisfy the requirements of:

1. Housing Australia – in relation to the funding to be provided to Link Wentworth Cammeray Limited (assignment of Lease from Link Wentworth Housing to Link Wentworth Cammeray – refer to Item 3, below); and
2. the NSW Department of Communities and Justice (DCJ) – in relation to other project-related funding.

These approvals are critical, as the remaining documentation associated with the transfer process is contingent upon the consent of these entities.

This report addresses the key matters relevant to Council.

1. Transfer of Ownership Shares (Clause 12 of the Development Management Agreement)

On 10 July 2023, Council endorsed a financial contribution of \$3,089,831 plus GST, as well as the finalisation of the Development Management Agreement.

Clause 12 of the Development Management Agreement provides that, upon receipt of the Total Financial Contribution, the land is to be held by the Landlord entities as tenants in common in revised ownership shares. The adjustments to the share ratios and corresponding percentages are outlined below:

Name	Current Share Ratio	Current Share percentage	Share Ratio after transfer of Shares	After transfer of Shares percentage
Link Wentworth Housing (LWH)(Transferor)	$\frac{6279}{7279}$	86.26%	$\frac{4877}{7279}$	67%
NSC (Transferee)	$\frac{1000}{7279}$	13.74%	$\frac{2402}{7279}$	33%

To formalise this adjustment, the Landlord entities must execute a Deed of Transfer, which will document the updated ownership structure and enable the Certificate of Title to be amended to reflect the revised share proportions.

2. The Lease (Clause 13 of the Development Management Agreement)

The former lease between North Sydney Council, NSW Land & Housing Corporation, and Community Housing Lower North Shore as the Landlords and Community Housing Lower North Shore as the tenant, expired on 21 December 2018 but continued thereafter under the holding-over provisions.

Under Item 6 of the Schedule to the Development Management Agreement, the new lease commenced on 7 November 2025, one day after Practical Completion was achieved, and will expire on 6 November 2074, establishing a new lease term of 49 years.

Clause 13.1(b) of the Development Management Agreement provides that the Landlord (Link Wentworth Housing and NSC) and the Lessee (Link Wentworth Housing) are bound by the terms of the lease from and including the Commencement Date, irrespective of whether all parties have physically executed the document. As a result, the Development Management Agreement deems the Lease to have already been granted as of 7 November 2025.

Formal approval of the lease is now required from North Sydney Council to complete the documentation process.

3. Deed of Consent and Assignment of Lease (Clause 14 of the Development Management Agreement)

Link Wentworth Housing, in its capacity as Lessee, intends to assign the lease to its related entity, Link Wentworth Cammeray. Under Clause 14 of the Development Management Agreement, North Sydney Council and Link Wentworth Housing, as Landlords, are required to provide consent to the assignment.

Given the complexity of the arrangement and the fact that Link Wentworth Housing appears in multiple capacities (as joint landlord with Council, as lessee, and through its subsidiary as transferee), the full entity details have been included below to assist Council in clearly understanding the structure of the transactions and the roles of each party involved.

Overview of Entity Roles and Relationships

1. Ownership / Landlord Structure (after transfer of shares)
 - North Sydney Council (NSC) – Landlord (33% owner)
 - Link Wentworth Housing (LWH) – Landlord (67% owner)Together they constitute “the Lessor” under the Lease.
2. Lease Structure
 - Link Wentworth Housing originally held the Lease as Lessee.
 - Under the Development Management Agreement, the Lease commenced on 7 November 2025, therefore the lease is deemed to have commenced in accordance with Clause 13.1(b).
3. Proposed Assignment of Lease
 - Link Wentworth Housing, as Lessee, proposes to assign the Lease to its related entity, Link Wentworth Cammeray Ltd (Transferee).
4. Council’s Role
 - Under Clause 14 of the Development Management Agreement, NSC, as joint Landlord, must provide formal consent to the assignment.
5. Transfer of Link Wentworth Housing’s 67% ownership share to Link Wentworth Cammeray
 - Funding from Housing Australia has been confirmed, subject to Link Wentworth Housing transferring its entire 67% ownership share to Link Wentworth Cammeray Ltd.
6. New Landlord and Lessee Structure Following Transfer of Shares to Link Wentworth Cammeray:
 - Once the share transfer is completed, Link Wentworth Cammeray will assume both roles:
 - 67% Landlord (jointly with NSC – 33%), and
 - Lessee under the finalised Lease.
7. Lease Mortgage
 - To secure funding from Housing Australia and the NSW Department of Communities and Justice, Link Wentworth Cammeray must register a mortgage over its leasehold interest, following the transfer of ownership shares.
 - This mortgage affects only the leasehold interest and does not impact NSC’s freehold title, however, consent from the registered proprietors (NSC and Link Wentworth Cammeray) is required.

- Accordingly, Council must provide Landlord consent to the registration of the leasehold mortgage.

Summary

- NSC and Link Wentworth Housing currently hold the property as joint owners.
- Link Wentworth Housing is the current Lessee and intends to assign the Lease to Link Wentworth Cammeray.
- Council’s consent is required under the Development Management Agreement for the lease assignment.
- Funding conditions require Link Wentworth Housing to transfer its 67% ownership share to Link Wentworth Cammeray.
- Link Wentworth Cammeray will then hold both the ownership share as landlord, and the lease, as lessee, and will proceed to mortgage its leasehold interest to secure project funding.

Conclusion

The construction of the community housing project at 287 Miller Street is now complete, with tenants having been housed, and the final legal and administrative steps must now be resolved. Approving the transfer of ownership shares, the new lease, the lease assignments, and the leasehold mortgage will finalise Council’s obligations under the Development Management Agreement and allow Link Wentworth Cammeray to assume long-term operational responsibility for the affordable housing development.

Consultation requirements

Community engagement is not required.

Financial/Resource Implications as per Clause 11 of the DMA

In accordance with Council’s resolution of 10 July 2023, the committed contribution of \$3,089,831 (plus GST) was remitted to Link Wentworth Housing, as Developer, in two instalments as set out below:

Date	Payment including GST	Description
17 June 2024	\$2,719,051.28	Initial payment - 80% of Council’s committed contribution
14 November 2025	\$ 679,762.82	Final payment - 20%, released following the issue of the Certificate of Practical Completion.
	Total: \$3,398,814.10	

Legislation

- The Conveyancing Act 1919 - relates to the Transfer of entities.
- The Local Government 1993 - governs the leasing obligations in relation to Operational Land.
- The Residential Tenancies Act 2010 – governs the relationship between tenants and Landlords to set clear rules for renting a home.



BRIEFING PAPER – 287 MILLER STREET CAMMERAY

To: Rebecca Aukim
From: Paul Hunt – Head of Development
Item: Updated project cost and investment summary
Date: 10 March 2021

EXECUTIVE SUMMARY

Council and Link Housing (renamed Link Wentworth Housing post-merger) met on 11 June 2020 to discuss council's investment in an affordable housing project, originally proposed in a briefing paper to the Director Community & Library Services dated 17 April 2020. That briefing paper outlined high level projected project costs and investment requirements for Council's desired 51% majority ownership.

At our 11 June 2020 meeting Council provided a report from AVG Specialist Valuers, which assessed the market value of land at **\$1,850,000** and I note that whilst the market has increase significantly over the past 16 months (30%+), we have not sought to increase the land value in our updated assessment of project costs, and it remains per AVG's 1 June 2020 assessment of market value.

In July 2021, Link Wentworth received development approval from the North Sydney Planning Panel and a notice of determination from North Sydney Council (D335/20) based on a revised project design. In February 2022 our quantity surveyor repriced the construction cost based on the DA design and current state of the construction sector post Covid 19. This briefing paper provides an update on project costs and investment requirements.

Based on Council's 1 June 2020 valuation, North Sydney Council would need to invest **\$689,344** to reach a 51% ownership position for the existing 5-bedroom cottage at 287 Miller Street.

The updated development cost estimate of 12 new studio apartments at 287 Miller Street is currently projected to be **\$4,706,838**. A 51% investment and 49% investment from North Sydney Council and Link Wentworth would require contributions of **\$2,400,487** and **\$2,306,351** respectively.

Based upon council's 2020 valuation and current build estimates, North Sydney Council would need to invest **\$689,344** (land ownership adjustment) and **\$2,400,487** (development cost contribution), total **\$3,089,831** to own the desired 51% majority ownership in this well-located affordable housing project.

Overleaf I provide an updated project cost and investment summary. This information has been updated since our advice provided to council in July 2020. As discussed, even with access to cheap long-term concessional finance through NHFIC only available to the Community Housing Sector, the low revenue generated from social housing level rents is insufficient to service the post construction debt and additional capital investment is required for a financially sustainable project.

If you have any queries or require any additional information, please don't hesitate in calling me on 0466 428 099 or emailing paul.hunt@linkwentworth.org.au



Land Ownership

1a. Long-standing Ownership Split (1993-2019)

In 1993 title to the Property vested in LAHC, North Sydney Council and Link Wentworth as tenants in common in shares proportionate with their respective contributions as follows:

Current land ownership		
As to the Department:	5879 7279	Share or 80.767%
As to the Council:	1000 7279	Share or 13.738%
As to Link Wentworth:	400 7279	Share or 5.495%

1b. Current Ownership Split (based on Council's 1 June 2020 valuation of \$1,850,000)

Post the sales of LAHC's equity share to Link Wentworth, the ownership was as follows:

Ownership split post acquisition of LAHC's equity share		
As to the Council:	1000 7279	Share or 13.738% = 254,156
As to Link Wentworth:	6279 7279	Share or 86.262% = 1,595,844
		TOTAL = \$1,850,000

1c. Proposed Ownership Split (2021)

Ownership	% Split	Proposed	Current	Difference
As to the Council:	51	943,500	254,156	689,344
As to Link Wentworth:	49	906,500	1,595,844	-689,344
		\$1,850,000	\$1,850,000	

2. Estimated Development Costs

Based on development consent (D335/20) – the project will deliver 12 new studio apartments with an estimated delivery cost as follows:

Delivery cost summary (excl. land + acquisition costs)	Total
Construction costs incl. escalation and contingency (10%)	3,903,500
Professional fees incl. Project Manager	459,683
Statutory fees	40,016
Project contingency (5%)	213,426
Holding costs	7,500
Capitalised interest expense	82,713
TOTAL	\$4,706,838

Notes:

- a. Updated QS advice on construction costs (Feb 2022) is based on the approved DA design and notice of determination by council dated July 2021. Costs have risen as a result of requested design changes and covid supply chain increases in both material and labour costs. As a result we have adjusted allowances for price escalation to the midpoint of the delivery program and construction contingency.



- b. Professional fees are now adjusted for an open tender requested by council and for an external Project Management service provider per Link Wentworth's Board direction.
- c. Statutory costs per council's notice of determination and allowances for holding costs during construction, PCA and CC fees.
- d. Capitalised interest calculated from the June 2020 land valuation date – notional acquisition date, not the March 2019 date of acquisition from NSW government. This has reduced the projects capitalised interest expense.
- e. Construction contingency allowance of **\$351,000** (10%, +5% increase); and
- f. Project contingency allowance of **\$213,426** (5%) maintained.

Exclusions:

- a. Land costs
- b. Acquisition costs

3. Apportionment of Development Costs

Based upon the revised development cost estimate of **\$4,706,838** (Feb 2022) and North Sydney Council's desired position of a 51% investment of the estimated development costs (including contingency) would be as follows:

Ownership	Investment %	Contribution amount
As to the Council:	51	2,400,487
As to Link Housing:	49	2,306,351
		TOTAL \$4,706,838

4. External Project Manager and Building contractor

An RFP for suitably qualified and experienced Project Manager was concluded, with Signature Project Management being awarded a contract in Nov 2021.

Link Wentworth's Board approved release of an RFT to identify a suitably qualified constructor. Prior to release Council will review tender documentation and endorse a tender evaluation plan to achieve a single price 'lump sum' building contract for all works. Council have nominated John Thomson to join the tender evaluation panel and will nominate a representative to attend the monthly project control group meetings.

5. Indicative timescale

Program	Timescale
Development consent	Mid 2021 - completed
Tender documentation	Mar 2022 - Underway
Tender/award of contract	Anticipated - Aug 2022
Completion	Anticipated - Aug 2023

6. Timing of Agreement and Council Investment

A draft development deed, lease and certifier deed have been reviewed by council and Link Wentworth is making final adjustments. These documents could be ready for execution in mid-April 2022. It is proposed that 80% of council's investment would be made available at project commencement (Aug 22) and the remaining 20% available on practical completion in (Aug 23).

10.4. Community Housing Project Update 287 Miller Street Cammeray

AUTHOR	Rebecca Aukim, Director Community & Library Services
ENDORSED BY	Marcelo Occhiuzzi, Director Community, Planning and Environment
ATTACHMENTS	<ol style="list-style-type: none"> 1. Council Report 28 September 2020 [10.4.1 - 49 pages] 2. Council Report 28 March 2022 [10.4.2 - 7 pages] 3. Revised Investment Summary May 2023 [10.4.3 - 3 pages]
CSP LINK	<ol style="list-style-type: none"> 2. Our Built Infrastructure 2.1 Infrastructure and assets meet diverse community needs

PURPOSE:

The purpose of this report is to provide Council with an update on the 287 Miller Street Cammeray community housing project and recommend a way forward in pursuit of its delivery.

EXECUTIVE SUMMARY:

- In March 2023, Council and community housing provider Link Wentworth, completed the tender process for 287 Miller Street Cammeray to build 12 self-contained one-bedroom affordable housing units. The development received development consent in July 2021.
- Council currently owns approximately 14% of the Miller Street property. Council has previously resolved to acquire 51% ownership of the site concurrent with its contribution for the construction of the development of the site.
- In March 2022, Council endorsed a contribution of \$3,089,831 which would represent 51% of the cost of construction of the project and increase Council's ownership to 51% of the land and associated development. In the time that has passed since that resolution, construction costs have risen appreciably and a further contribution of \$1,818,748 would be required towards the project in addition to the contribution towards construction costs, to achieve the ownership benchmark previously endorsed by Council.
- This report presents various options to deal with the project and the associated increased construction costs and recommends that the previously endorsed monetary contribution be maintained, and that the 51% ownership of the site no longer be pursued. This is considered a prudent approach and achieves the underlying intent of this project, which is to provide an additional 12 residential community housing units in North Sydney.
- Associated with this proposed development is a draft Development Agreement between Council and Link Wentworth which provides clarity around shared costs and other arrangements. It remains in draft form and includes in-principle agreements to address any overrun or underrun of costs. The draft Agreement specifies that cost overruns must be funded and borne in full by Link Wentworth at their sole risk and underruns shall be proportionately refunded to the Landlord (North Sydney Council) upon Practical Completion.

RECOMMENDATION:

- 1. THAT** Council endorse Option 1 to finalise a development agreement with Link Wentworth Housing to pursue the construction and delivery of the community housing project at 287 Miller Street, Cammeray which represents a total contribution of \$3,089,831 to be sourced from Council's affordable housing contribution restricted reserve.
- 2. THAT** the General Manager be issued with delegated authority to finalise the Development Agreement with Link Wentworth as the basis to deliver the housing project in partnership with Council.

Background

North Sydney Council has had a long history of providing, supporting, and advocating for affordable and social housing. Council has been part owner of the property at 287 Miller Street (with Link Wentworth and the Department of Housing) since 1993.

Council was previously able to collect contributions towards affordable housing however no such contributions have been collected since 2013. The funds of \$4,390,000 currently held are internally and externally restricted and can only be expended for affordable and social housing.

The recent history of Council decisions relevant to the management and development of the property at 287 Miller Street are highlighted below.

At its meeting of 23 September 2019 Council resolved:

- 1. THAT Council explore with its approved Community Housing Provider options for increasing the number of social housing beds in North Sydney by utilising the capital funds accumulated for this purpose.*
- 2. THAT at the next Quarterly Budget Review Council consider that an amount of \$4,381,105 be allocated to this project from funds collected for this purpose.*
- 3. THAT the outcome of any improved or additional asset being purchased with these funds includes the stipulation that Council holds a majority share of the title.*

In June 2020, Council had the land value for 287 Miller Street Cammeray evaluated by AVG Specialist Valuers who assessed the market value of land at \$1,850,000. Although the market has increased significantly since then, Link Wentworth have not asked to increase the land value in their updated assessment of project costs to retain Council's share in the ownership of the dwelling.

In June 2020, Council met with Link Housing to discuss the possible investment in an affordable housing development at 287 Miller Street, Cammeray.

At its meeting 28 September 2020 (Attachment 1), Council resolved:

- 1. THAT Council enter into an Agreement with Link Housing for Council to acquire a majority share of the property referred to in this report – 287 Miller Street, Cammeray.*
- 2. THAT Council make a monetary contribution equivalent to its ownership share from the Affordable Housing reserve for the establishment of the 11 new studio apartments referred to in this report.*
- 3. THAT the General Manager (or Delegate) be authorised to finalise the contribution and equity share, subject to the constraints above, to ensure that Council obtains fair value for its contribution.*
- 4. THAT the property continues to be managed as part of the North Sydney Council Local Housing Program Property Management Agreement, 31 October 2018.*

At its meeting 28 March 2022 (attachment 2), Council resolved:

1.THAT Council's total contribution towards the construction of a New Generation Boarding house which will include two units for women escaping domestic and family violence, be capped at a maximum contribution of \$3,089,831 from the Affordable Housing Reserve to achieve a 51% majority share.

2.THAT the Development Agreement between Council and Link Wentworth include clauses ensuring that costs overrun must be funded and borne in full by Link Wentworth at their sole risk and underruns shall be proportionately refunded to the Landlord (North Sydney Council) upon Practical Completion.

Development consent (DA335/20) was issued for a 12-unit residential development in July 2021.

The Development Agreement between Council and Link Wentworth has been in the process of being progressed and refined since Council's decision to enter into an agreement in September 2020. The Agreement will contain clauses that address any overrun or underrun of costs – it will specify that costs overrun must be funded and borne in full by Link Wentworth at their sole risk, and underruns shall be proportionately refunded to the Landlord (North Sydney Council) upon Practical Completion as resolved by Council.

Report

In March 2023, Council and Link Wentworth completed the tender process for 287 Miller Street Cammeray to build twelve self-contained one-bedroom affordable housing units. Arising from that tender, Decode Group's submission had the most competitive price, however, its tendered price was significantly higher than the pre-tender estimate. There is less appetite for risk in the current construction market which is reflected in a sector-wide increase in delivery costs and many construction firms are facing adverse economic conditions.

Council currently owns 13.8% of the Miller Street property. For Council to increase its proportion of this ownership to 51%, it would need to contribute \$689,344.

The construction cost of the project is \$8,273,009. If Council were to pursue the 51% ownership in the property as previously endorsed, the ownership and construction contribution would represent \$4,908,579. This equates to \$1,818,748 additional investment over and above Council's previous commitment of \$3,089,831. These figures are detailed in Attachment 3 to this report.

At present, a contribution of \$3,089,831 (as previously resolved) will provide Council with an ownership share of 33% in the combined land and delivered housing project.

There is currently approximately \$4,390,000 in the affordable/social housing restricted reserve available to be spent.

Options

The options that discussed in the table below seek to explore the most optimal ways in which to maximise Council's limited available affordable/social housing reserve funding.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	Continue to contribute a capped maximum amount of \$3,089,831 from the Affordable Housing Reserve and accept 33% ownership for 287 Miller St. instead of 51% ownership.	This option will prevent any further delays and allow the project to be completed in approximately July 2024. Council will not have a controlling share in the site.	N/A
2.	Council contributes a further \$1,300,000 available from the Affordable Housing Reserve.	This option will increase Council's ownership to approximately 42% and allow the project to continue to schedule.	N/A
3.	Council contributes an additional amount of \$1,818,748 to the project to secure 51% majority ownership of the site. There is an additional \$1,300,000 available in the Affordable Housing Reserve. An additional \$481,252 would need to be sourced elsewhere, possibly from new borrowings.	This option requires Council to find an additional \$481,252 in funds.	N/A

Given that the ultimate objective of the project, and Council's affordable/social housing restricted reserves, is to deliver new housing units in North Sydney, Option 1 is recommended. Council should, however, be aware of the following factors:

This preferred option means that Council will be the minority owner in this partnership. It potentially means that Council would be in a less favorable position regarding any future decisions relating to the site. It should be noted however, that Link Wentworth is a "tier 1" community housing provider which has shared a strong and collaborative relationship with Council, and similar objectives.

It should also be noted that of Council's 23 affordable housing properties (130 tenancies), seven are in minority ownership by Council (including this one). It is a reasonable assumption that housing affordability will continue to remain a significant problem in Sydney in the long term and that community housing providers like Link Wentworth will also continue to be part of the housing landscape. Council also has an existing Property Management Agreement with Link Wentworth that provides guidance on a variety of relevant matters. The agreement is due to be reviewed by 31 October 2023. Whilst minority ownership is an issue for consideration, the overriding objective of current policy and the intent of the source of investment funds for this project (in restricted reserve), is to provide for affordable housing, which is achieved by the recommendations of this report.

The following provides the basis for this recommendation.

- Option 1 does not require any further funding over and above the previously committed funding. It enables a small reserve to be retained for other projects (e.g., the Parraween Street affordable housing development) that may be pursued in the short to medium term. The advantage of retaining a degree of funding in the restricted reserve (\$1.3M) is that it may be used to leverage additional State or Federal Government funding given the current increased focus on affordable and social housing initiatives by those levels of government.
- This option does not require significant additional borrowing, which in the current financial climate, is a preferable option.
- Option 1 will prevent any further delays and would allow the project to be completed in or about July 2024, providing twelve new self-contained one-bedroom affordable housing units. Two of the units will be set aside for women escaping domestic violence.
- Not proceeding with the Resolution to own 51% of the development does not pose any particular risks to Council given that the asset is in joint ownership with a community housing provider that shares very similar objectives to Council's.

Consultation requirements

Community engagement is not required.

Financial/Resource Implications

The preferred direction of Option 1 requires that an amount of \$3,089,831 from the Affordable Housing Reserve be allocated in the 2023/24 financial year to cover this investment, as previously indicated to Council.

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

THOMSON GEER
LAWYERS

Level 14, 60 Martin Place
Sydney NSW 2000 Australia

T +61 2 8248 5800 | F +61 2 8248 5899

**Development Management Agreement - 287 Miller
Street, Cammeray NSW 2062**

between

**Link Wentworth Housing Limited ABN 62 003 084 928 and North Sydney
Council ABN 32 353 260 317 (Landlord)**

and

Link Wentworth Housing Limited ABN 62 003 084 928 (Developer)

and

Link Wentworth Housing Limited ABN 62 003 084 928 (Tenant)

www.tglaw.com.au
Sydney | Melbourne | Brisbane | Perth | Adelaide
ABN 21 442 367 363

ADVICE | TRANSACTIONS | DISPUTES
Domestic & Cross border

Table of contents

1	Definitions and interpretation.....	1
1.1	Definitions	1
1.2	Interpretation.....	7
2	Not used.....	8
3	Appointment of Developer as development contractor.....	8
3.1	Appointment.....	8
3.2	Consideration.....	9
3.3	Access to site.....	9
3.4	Authorisations	10
3.5	Responsibility.....	10
3.6	Extent of authorisation	10
3.7	Exclusivity	10
3.8	Contamination.....	11
3.9	Co-operation	11
4	Development approvals and design development.....	11
4.1	Approvals.....	11
4.2	Appeals.....	12
4.3	Construction Certificate for Landlord's Works	12
5	Works related matters.....	12
5.1	Independent Certifier	12
5.2	Occupational health and safety	12
5.3	Vacation and management of existing occupants	13
6	Landlord's Works	13
6.1	Carrying out of Landlord's Works	13
6.2	Establishment of the Steering Committee	14
6.3	Monthly progress report.....	15
7	Variations.....	15
7.1	No Landlord Variations	15
7.2	Limitation on Variations to Landlord's Works	15
8	Not used.....	16
9	Practical Completion of the Landlord's Works.....	16
9.1	Notice of anticipated Practical Completion.....	16
9.2	Joint inspection	16
9.3	Issue of Practical Completion certificate.....	16
9.4	Final and binding	16
9.5	Occupancy Permits.....	16
9.6	Other documents	16
10	Defect rectification	17
10.1	Not used	17
10.2	Notification of Defects	17
10.3	Rectification of Defects.....	17
11	Payments	17
11.1	Total Financial Contribution.....	17
11.2	Payment of Initial Development Fees.....	17
11.3	Payment of the balance of the Total Financial Contribution.....	17
11.4	Certification of Building Construction Costs	18
11.5	Cost Overruns.....	18
12	Change of ownership share.....	18
12.1	Ownership share.....	18
12.2	Documentation.....	18

13	The Lease	18
13.1	Grant of Lease	18
13.2	Completion of Lease	19
13.3	Execution of Lease	19
13.4	Financier's consent	19
14	Assignment	19
14.1	Dealings by Developer	19
14.2	Dealings by Tenant	20
14.3	Assignment by Landlord	20
15	Termination	20
15.1	Tenant's rights	20
15.2	Sunset Date	20
15.3	Insolvency Event	20
15.4	Step in and set-off rights	21
16	Survival of rights and obligations	21
17	General	21
17.1	Notices	21
17.2	Governing law	22
17.3	Jurisdiction	22
17.4	Expenses	22
17.5	Duty	22
17.6	Interest	23
17.7	Indemnity	23
17.8	Entire understanding	23
17.9	Employees	23
17.10	Cause	23
17.11	Amendments	23
17.12	Counterparts	24
17.13	Waiver	24
17.14	Further acts and documents	24
17.15	Consents	24
17.16	Prior breaches	24
17.17	Severance	24
18	Confidentiality	24
18.1	Confidentiality obligation	24
18.2	Permitted disclosure	24
19	GST	25
20	Warranties	26
21	Dispute resolution	26
21.1	First stage	26
21.2	Expert determination	26
21.3	Running of time	27
Annexure A	31
	Plans and Specifications	31
Annexure B	37
	Lease	37
Annexure C	38
	Draft Certifier Deed	38

Reference Schedule

Item 1	Land
(Clause 1.1)	Lot 5 in Deposited Plan 4206
Item 2	Building
(Clause 1.1)	287 Miller Street, Cammeray NSW 2062
Item 3	Lease
(Clause 1.1)	The lease of the Building between the Landlord (as landlord) and the Tenant (as tenant) to be entered into pursuant to this agreement, with effect from the Commencement Date, in the form of Annexure B and completed in accordance with clause 13
Item 4	(a) Council Contribution
(Clause 1.1)	\$3,089,831.00 plus GST
	(b) LW Contribution
	\$5,700,000 plus GST
	(c) Total Financial Contributions
	\$8,789,831 plus GST
	(d) Initial Development Fees
	80% of the Total Financial Contributions, comprising:
	(i) 80% of the Council Contribution; and
	(ii) 80% of the LW Contribution
Item 5	Rent
(Clause 1.1)	A peppercorn (if demanded)
Item 6	Commencement Date
(Clause 1.1)	The day after the Date of Practical Completion
Item 7	Address for service of notices
(Clause 17.1)	

Landlord

Name: Link Wentworth Housing Limited and North Sydney Council

Address: c/- North Sydney Council, 200 Miller Street, North Sydney NSW 2060

Email: Marcelo.Occhiuzzi@northsydney.nsw.gov.au

For the attention of: Marcelo Occhiuzzi

Name: Link Wentworth Housing Limited

Address: Level 10, 67 Albert Avenue, Chatswood NSW 2067

Email: sean.carty@linkwentworth.org.au

For the attention of: Sean Carty

Developer

Name: Link Wentworth Housing Limited

Address: Level 10, 67 Albert Avenue, Chatswood NSW
2067

Email: sean.carty@linkwentworth.org.au

For the attention of: Sean Carty

Tenant

Name: Link Wentworth Housing Limited

Address: Level 10, 67 Albert Avenue, Chatswood NSW
2067

Email: sean.carty@linkwentworth.org.au

For the attention of: Sean Carty

Item 8 **Not used**

Item 9 **Certifier**
(Clause 1.1) DJ Gabriel Consulting ABN 93 139 332 317 trading as Signature Project Management

Item 10 **Sunset Date**
(Clause 1.1) 24 months from the date of this agreement

This agreement is made on 8 January 2024 20

between **Link Wentworth Housing Limited ABN 62 003 084 928** of Level 10, 67 Albert Avenue, Chatswood NSW 2067 and **North Sydney Council ABN 32 353 260 317** of 200 Miller Street, North Sydney, NSW 2060 (**Landlord**)

and **Link Wentworth Housing Limited ABN 62 003 084 928** of Level 10, 67 Albert Avenue, Chatswood NSW 2067 (**Developer**)

and **Link Wentworth Housing Limited ABN 62 003 084 928** of Level 10, 67 Albert Avenue, Chatswood NSW 2067 (**Tenant**)

Recitals

- A The Landlord is the owner of the Land.
- B Under this agreement, the Landlord appoints the Developer as its development contractor and the Developer undertakes to the Landlord that the Developer will procure and carry out the Landlord's Works subject to the terms set out in this agreement.
- C The Developer will enter into the Construction Contract with the Builder to design, construct, fit out and complete the Landlord's Works in accordance with this agreement.
- D The Landlord has agreed to grant the Lease to the Tenant and the Tenant has agreed to accept the Lease from the Landlord on the Commencement Date and subject to the terms of this agreement.
- E The Landlord and Developer have agreed to make financial contributions to the development in accordance with the terms of this agreement.

Now it is agreed as follows:

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Approval means the development consent for the Landlord's Works, and any other approval, consent, licence, permission or certificate issued by an Authority to authorise any work on or use of the Land;

Australian Standards means any standards published by Standards Australia International Limited trading as Standards Australia, as at the date of this agreement, and any other standards published by Standards Australia after the date of this agreement compliance with which is mandatory;

Authority means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity, authorised private certifier or other body or person authorised by Law;

Base Building Approvals means all necessary Approvals required to carry out the Landlord's Works;

BBSY Rate means the rate, expressed as a percentage per annum (rounded up to 4 decimal places), which is the average of the bid rates shown at approximately 10:15 am (in the capital city of the State) on the Reuters Monitor System on the date on which the interest is first calculated and every 30 days thereafter for a period of 30 days or, where those bid rates are no longer shown in order to calculate the average rate, then the rate known as the 'Interbank Overnight Cash Rate', as determined by the Reserve Bank of Australia and published on the

Reserve Bank of Australia website at or about 9.00 am (in the capital city of the State) on the first day of the relevant period;

Builder means the contractor engaged by the Developer from time to time to carry out the Landlord's Works;

Building means the buildings that will be constructed on the Land as part of the Landlord's Works, as described in Item 2;

Building Code of Australia means the Building Code of Australia produced and maintained by the Australian Building Codes Board on behalf of the Australian government and State and Territory governments;

Building Construction Costs means the aggregate of:

- (a) all amounts payable under the Construction Contract in connection with the Landlord's Works, as certified under the Construction Contract;
- (b) any other costs incurred by the Developer in carrying out, or procuring the carrying out of, the Landlord's Works;
- (c) the cost of obtaining all Approvals relating to the Landlord's Works;
- (d) consultants' fees relating to the Landlord's Works;
- (e) the Developer's internal administrative fees and costs properly, reasonably and directly incurred for managing the project comprising the Landlord's Works and for performing its services under this agreement including, without limitation, the costs incurred before the date of this document ;
- (f) the Developer's fees properly, reasonably and directly incurred in relation to the project comprising the Landlord's Works, including but not limited to agent's fees and ancillary costs properly, reasonably and directly incurred in respect of the project comprising the Landlord's Works ; and
- (g) the Developer's legal fees, costs and disbursements properly, reasonably and directly incurred in respect of the negotiation of the documents relating to the project comprising the Landlord's Works,

which amounts include costs of the nature in (a) to (g) of this definition incurred before the date of this document;

Building Services means the services or systems of any nature to be supplied to the Building, including loading docks, storage areas, elevators, fire services, air conditioning, gas, water, drainage, fresh air, exhaust systems, electricity, sprinkler heads, heating and lighting and services or systems (including security, access control and building monitoring systems);

Business Day means any day other than Saturday, Sunday or a public holiday in the capital city of the State;

Business Hours means the hours between 9:00 am and 5:00 pm on Business Days;

Certifier means the person named in Item 9 or such other independent certifier to be appointed jointly by the Landlord and the Developer (substantially in accordance with the Draft Certifier Deed or otherwise as agreed by those parties);

Certifier Deed means the deed to be entered into pursuant to clause 5.1;

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation or claim for abatement of rent obligation;

Commencement Date means the date in Item 6;

Confidential Information means the following, whether oral or in writing, in electronic form or in any other form or medium:

- (a) the existence of this agreement;
- (b) the terms of this agreement; and
- (c) all information relating to or incidental to this agreement which is supplied to, or obtained by, any party in any way;

Construction Contract means the contract to be entered into between the Developer and the Builder for the carrying out of the Landlord's Works;

Contamination means the presence in, on or under land, air or water of a substance (whether a solid, liquid or gas) or matter (whether emitting odour, heat, sound, vibration or radiation) at a concentration or level above the concentration or level at which the substance or matter is normally present in, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment, or results in a non-compliance with or breach of any Environmental Law or Environmental Authorisation and includes all Hazardous Materials;

Controller has the meaning it has in the Corporations Act;

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

Cost means any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid), including (where appropriate) all legal fees;

Cost Overrun means the amount by which the Building Construction Costs incurred to achieve Practical Completion exceeds the Total Financial Contribution;

Council Contribution means the amount detailed at Item 4(a) payable by North Sydney Council ABN 32 353 260 317 in accordance with clause 11;

Date of Practical Completion means the date on which Practical Completion is achieved as specified in the certificate issued by the Certifier under clause 9.3;

Defect means the Landlord's Works not being in accordance with the requirements of this agreement or any dopant image occasioned by the Landlord's Works not being in accordance with this agreement;

Defect Liability Period means the period of 12 months from the Date of Practical Completion;

Dispute means any dispute between or among the parties in relation to any matter under this agreement (except in respect of a matter to be determined by the Certifier);

Dispute Notice means a notice issued in accordance with clause 21;

Duty means any stamp duty, duty or similar impost including any penalties, fines and interest;

Draft Certifier Deed means the agreement in Annexure C;

Employees means employees, agents, contractors, consultants, customers, workmen, invitees, clients and visitors of a party, its subtenants, licensees and commissionaires, and others who may at any times be in or on the Land with invitation;

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism; and

(d) human-made or modified structures and areas,

and includes interacting natural ecosystems that include components referred to in paragraphs (a)-(d);

Environmental Authorisation means a licence, consent, approval, permit, authorisation, certificate of registration or other concession issued by an Authority and any agreement which is required, obtained or entered into pursuant to an Environmental Law;

Environmental Law means any Law which relates to an aspect of the Environment or health, whether made or in force before or after the Commencement Date, and includes Laws concerning:

- (a) emissions of substances into the atmosphere, waters and land;
- (b) pollution and Contamination of the atmosphere, waters and land;
- (c) production, use, handling, storage, transportation and disposal of:
 - (i) waste;
 - (ii) hazardous substances; and
 - (iii) dangerous goods;
- (d) threatened, endangered and other flora and fauna species; or
- (e) the health and safety of people;

Environmental Liability means any of the following liabilities in relation to the Land:

- (a) all costs associated with undertaking any clean up ordered or required by any Authority of any land, building or waters;
- (b) any compensation or other monies that an Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages, Costs and interest, payable under or in accordance with any Environmental Law;

Expert means an appropriately qualified independent expert, of at least 10 years' immediate past experience in the relevant field, agreed between the parties or appointed under clause 21;

Further Work means any works required to be done pursuant to clause 9.2;

GST means a goods and services tax imposed under GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Law;

Hazardous Substances means any material that, because it is toxic, corrosive, flammable, explosive, or infectious or possesses some other dangerous characteristic, has the potential to present a risk of harm to people, including their health or to any other aspect of the Environment;

Initial Development Fees means that amount specified in Item 4(d);

Insolvency Event means the happening of any of these events:

- (a) a body corporate is (or states that it is) insolvent or under administration (each as defined in the Corporations Act) other than where due to a failure to pay a debt which is the subject of a good faith dispute where proceedings have been commenced in relation to that dispute; or
- (b) a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by a party, such approval not to be unreasonably withheld); or
- (d) an application is made for the appointment of a liquidator or provisional liquidator in respect of a body corporate and is not stayed, withdrawn or dismissed within 30 days, where the other party is satisfied, acting reasonably, that the application is not frivolous; or
- (e) an order is made or any other action is taken which could or does result in the appointment of a liquidator or provisional liquidator in respect of a body corporate; or
- (f) as a result of the operation of section 459(F)(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand, other than where that failure is due to a failure to pay a debt which is the subject of a good faith dispute where proceedings have been commenced in relation to that dispute; or
- (g) a body corporate is the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which a party reasonably deduces it is so subject); or
- (h) a body corporate is otherwise unable to pay its debts when they fall due other than where that failure is due to a failure to pay a debt which is the subject of a good faith dispute where proceedings have been commenced in relation to that dispute; or
- (i) a body corporate takes any step to obtain protection or is granted protection from its creditors under any applicable legislation, or an administrator is appointed to a body corporate; or
- (j) something having a substantially similar effect to (a) to (i) happens in connection with that person under the Law of any jurisdiction;

Land means the land described in Item 1 and, where the context requires, includes improvements on the Land;

Landlord's Works means all work to be undertaken by or on behalf of the Landlord in accordance with the Plans and Specifications, the Base Building Approvals, and the Use Consent and all Variations to the Landlord's Works made in accordance with this agreement;

Law includes any requirement of statute, rule, regulation, proclamation, ordinance or by-law present or future and whether state, federal or otherwise;

Lease means the lease described in Item 3;

LW Contribution means the amount detailed at Item 4(b) payable by Link Wentworth Housing Limited ABN 62 003 084 928 in accordance with clause 11;

Liabilities includes all threatened or actual proceedings, demands, damages, losses, claims, Costs, expenses, charges, fees, penalties, fines or other liabilities, duties or obligations to make any payment or carry out any work;

Liquidation includes liquidation, provisional liquidation, voluntary administration, receivership, compromise, arrangement, amalgamation, administration, reconstruction, winding up,

dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors, bankruptcy or death;

Money Owed has the meaning given in clause 15.4(a);

Monthly Progress Certificate has the meaning given in clause 11.4(b);

Notify means to notify a party in writing in accordance with clause 17.1;

Occupancy Permit means any Approval which is required by Law to enable occupation of the Building;

Plan of Premises means the plan of the Premises attached to the Lease;

Plans and Specifications means, subject to clause 4.3, the requirements and matters set out in the plans and specifications set out in Annexure A;

Practical Completion means that stage in the execution of the Landlord's Works when:

- (k) the Landlord's Works have been completed:
 - (i) in accordance with this agreement and the Plans and Specifications, subject to any Variations permitted under this agreement; and
 - (ii) in accordance with the Base Building Approvals and the Use Consent, except for minor alterations, defects or omissions which the Certifier has determined do not require immediate rectification and which the Developer has reasonable grounds for not promptly rectifying; and
- (a) practical completion has been certified as complete under the Construction Contract; and
- (b) all authorisations necessary to use and occupy the Landlord's Works are in force, except for any Landlord's Works which are required for a specific activity or business carried on by the Tenant (for example, accreditation);

Premises means the premises the subject of the Lease;

President means either the President of the Law Society in the State or the President of a professional body for the relevant discipline having regard to the subject matter of the Dispute;

Receiver includes a receiver or receiver and manager;

Related Body Corporate has the meaning given in the Corporations Act, but on the basis that 'subsidiary' has the meaning given to Subsidiary in this agreement and 'body corporate' includes any 'Related Entity' (as defined in the Corporations Act) or trustee, responsible entity or other person for the time being holding title to the assets of a trust, the trustee, responsible entity or manager of which is that party or a related body corporate of that party, but does not include an entity who has a director in common with another body corporate or an entity which holds a minority shareholding or minority voting rights in relation to another body corporate;

Remediation has the meaning given to it in the Contaminated Land Management Act 1997 (NSW);

Rent has the meaning given in Item 5;

Requirements means any requirements, notices, orders, approvals, consent, conditions or directions received from or given by any Authority;

Steering Committee means the reporting group established under clause 6.2;

State means the state of Australia in which the Land is located;

Subsidiary has the meaning given in the Corporations Act, but so that:

- (a) an entity will also be deemed to be a subsidiary of a company if it is controlled by that company (expressions used in this paragraph having the meanings given to them for the purposes of Part 2J.2 of the Corporations Act);
- (b) a trust may be a subsidiary, for the purposes of which a unit or other beneficial interest will be regarded as a share; and
- (c) a corporation or trust may be a subsidiary of a trust if it would have been a subsidiary if that trust were a corporation;

Sunset Date means the date specified in Item 10;

Surveyor means such licensed surveyor duly qualified with no less than 10 years' immediate past experience in surveying land and buildings in the nature of the Building;

Tenant's Business means the business carried on in or from the Premises by the Tenant in accordance with the use of the Premises as permitted by the Lease;

Total Financial Contributions means the amount detailed at Item 4(c) being the sum of the Council Contribution and LW Contribution;

Total Money Owed has the meaning given in clause 15.4(a);

Unacceptable Conditions means, in relation to any application by the Developer for an Approval:

- (d) the refusal by the Authority of the relevant town planning application for the Landlord's Works; or
- (e) the approval by the Authority of the relevant town planning application for the Landlord's Works or applications for other Approvals on conditions which are unacceptable to the Developer acting reasonably, or which are conditions which, in the Developer's reasonable opinion, materially adversely affect:
 - (i) the number of affordable housing units that may be constructed on the Land;
 - (ii) the ability to complete the Landlord's Works at a cost that does not exceed the Total Financial Contributions;
 - (iii) the Tenant's Business to be operated from the Premises;
 - (iv) the Premises; or
 - (v) access to the Premises;

Use Consent means all Approvals required to enable the Tenant to use the Premises for the Permitted Use (as defined in the Lease) and for the Tenant to operate its business from the Premises including the use of the Premises as a distribution facility;

Variation means, in relation to the Landlord's Works, any of the following:

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

1.2 Interpretation

In this agreement, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) a reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this agreement;
- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation, and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) **includes**, in any form, is not a word of limitation;
- (k) a reference to **\$** or **dollar** is to Australian currency;
- (l) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (m) a reference to an Item is to the relevant Item in the Reference Schedule in this agreement; and
- (n) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

2 Not used

3 Appointment of Developer as development contractor

3.1 Appointment

- (a) The Landlord irrevocably appoints the Developer to procure the carrying out of the Landlord's Works in accordance with this agreement.
- (b) For so long as this agreement remains in force, the Landlord must take no action in relation to the Premises or the Land unless:
 - (i) requested to do so by the Developer; or

- (ii) such action is required to be taken by the Landlord for the purposes of complying with any Law or the mandatory requirement of any Authority or can otherwise only be taken by the Landlord.

3.2 Consideration

Each party acknowledges to the other party that it enters into this agreement and incurs obligations under this agreement and gives rights under this agreement for valuable consideration received from the other party.

3.3 Access to site

- (a) The Landlord will provide the Developer and all others authorised by the Developer with full and unfettered access to the Land, and the right to occupy the Land to undertake the Landlord's Works from the date of this agreement. The rights given to the Developer under this clause are solely contractual and nothing in this clause creates or gives the Developer any estate or interest in the Land or any right to exclusive possession in its capacity as the Developer.
- (b) In order to facilitate the efficient and safe performance of the Landlord's Works by the Developer and the Builder and to enable the Developer and the Builder to discharge their occupational health and safety duties, the Landlord agrees that it will comply with the following requirements when accessing and using the Land from the date of this agreement:
 - (i) the Landlord first gives the Developer reasonable written notice, being not less than 48 hours' notice;
 - (ii) the Landlord is represented on the inspection by no more than 4 representatives and is accompanied by a representative of the Developer whom the Developer must make available to the Landlord at the appointment time for that purpose (such time to be agreed between the parties, both acting reasonably);
 - (iii) the Landlord's inspections of the Landlord's Works take place no more frequently than monthly; and
 - (iv) the Landlord is entitled to inspect the Landlord's Works during the period from the date of this agreement to the first to occur of the Date of Practical Completion and the Sunset Date.
- (c) The Landlord must, and must ensure that the Landlord's representatives who access the Land under clause 3.3(b):
 - (i) comply with all security, operational and safety, health and Environmental requirements and the reasonable directions of the site supervisor;
 - (ii) comply with the rules and other requirements in connection with the Building (such as security and emergency procedures, any non-smoking policy and procedures for delivering and transporting goods and materials);
 - (iii) cause as little disturbance or interference as is reasonably possible in the circumstances;
 - (iv) comply with all Laws and Requirements in connection with having access to the Landlord's Works; and
 - (v) do not, in accessing the Land, cause any damage to the Landlord's Works, and Notify the Developer of damage to the Building or of a fault in any Building Services as soon as it becomes aware of it.
- (d) The Landlord and its representatives enter the Land at their own risk, except to the extent that any Liability is caused by the negligence or default of the Developer or the Builder.

- (e) The Landlord releases and indemnifies the Developer and the Builder in respect of all Liability incurred by the Developer arising out of or in connection with access by the Landlord and the Landlord's representatives to the Land pursuant to this clause 3.3, except to the extent that such Liability were caused or contributed to by the negligence or default of the Developer or the Builder.

3.4 Authorisations

The parties acknowledge and agree that the Developer and all others authorised by the Developer are entitled to do all things which the Landlord would be legally entitled to do to undertake the Landlord's Works and which the Developer considers necessary or desirable to undertake the Landlord's Works, including:

- (a) to generally carry out the Landlord's Works, or procure the carrying out of the Landlord's Works, by entering into the Construction Contract;
- (b) to effect and maintain insurances noting the interests of the Landlord and other interested parties in such amounts and for such purposes as it sees fit, or procure those insurances to be effected;
- (c) to negotiate and enter into arrangements with any adjoining owner or Authority;
- (d) to procure the completion of all design and documentation in respect of the Landlord's Works;
- (e) to apply for, pursue, obtain and modify all Approvals, including any modifications and additional development consents;
- (f) to negotiate and enter into agreements for the supply of utility services to the Land, provided that, to the extent such arrangements do not expire prior to Practical Completion, the Developer must obtain the Landlord's consent to those arrangements (which must not be unreasonably withheld, must be given or refused within 15 Business Days after consent has been requested;); and
- (g) anything ancillary or incidental to the above.

3.5 Responsibility

From the date of this agreement, the Developer must ensure that the Landlord's Works are completed in accordance with the provisions of this agreement and the Developer must control, co-ordinate, administer and direct all other activities necessary for the completion of the Landlord's Works including:

- (a) the retention of the existing contractors and consultants, and the appointment of replacement contractors and consultants if required;
- (b) the supervision, control and direction of any contracts relating to the Landlord's Works; and
- (c) to the extent required, the supervision, and management of the fitting out of the Building.

3.6 Extent of authorisation

Clause 3.4 does not authorise the Developer to do anything which the owner of the Land is prevented from doing by Law.

3.7 Exclusivity

The Landlord agrees that prior to Practical Completion, for so long as this agreement has not been terminated, the Landlord will not, without the prior written consent of the Developer (which consent may be withheld in Developer's absolute discretion), enter into or permit or cause to be entered into an agreement with any other person for the carrying out of any Landlord's Works or other works on the Land.

3.8 Contamination

- (a) The Developer must not cause, and must ensure that its Employees do not cause, any Contamination on the Land.
- (b) The Developer shall be responsible for the Remediation of any Contamination on the Land discovered during the Landlord's Works.

3.9 Co-operation

From the date of this agreement, the Developer and the Landlord must (and must use all reasonable endeavours to procure their Employees to):

- (a) co-operate with the other party and the Certifier in relation to the performance of its and the other party's obligations, and the exercise of its and the other party's rights, under this agreement;
- (b) act in good faith towards each other in relation to all matters under this agreement and, unless the contrary intention appears, this obligation to act in good faith is not intended to give rise to any fiduciary relationship between the Developer and the Landlord, does not require them to take into account the interests of the other and does not require the Developer or the Landlord to act materially contrary to its commercial objectives;
- (c) promptly disclose to the other any material information regarding the Landlord's Works, which comes into the possession of one but not both of them; and
- (d) take all reasonable steps (including the execution of documents) and do everything reasonably required to give effect to the transactions contemplated by this agreement.

The Landlord must do all such things as are reasonably necessary (including giving its consent and signing relevant documents) to enable the Developer to exercise its rights and perform its obligations under this agreement.

4 Development approvals and design development

4.1 Approvals

- (a) When any Approvals are required but have not previously been obtained, the Developer must procure all such Approvals necessary for the Landlord's Works and necessary to achieve Practical Completion.
- (b) Subject to clause 7.2, the Landlord acknowledges that Developer may apply to make any changes or modifications to the Approvals which the Developer, acting reasonably, considers necessary or desirable in respect of the Landlord's Works.
- (c) The Developer must, in respect of any application to an Authority for a change or modification to an Approval made in accordance with clause 4.1(b):
 - (i) promptly after making submitting the application to the Authority, Notify the Landlord of the application, providing reasonable details of the change or modification to the Approval; and
 - (ii) keep the Landlord reasonably informed in relation to the progress of the Authority's determination of the application (including by promptly providing the Landlord with copies of material communications sent and received between the Developer and the relevant Authority in relation to the application).
- (d) The Landlord will, without delay, provide all necessary consent (as the registered proprietor of the Land) and assistance, and sign all documentation, reasonably

required by the Developer to procure any Approvals required in connection with the Landlord's Works or any changes to or modifications of the Approvals.

- (e) The Developer must make any application for all Approvals in a timely and efficient manner.
- (f) The Developer must provide a copy of the relevant Approval and any modifications to it, to the Landlord as soon as practicable after it is obtained.

4.2 Appeals

If any Authority:

- (a) refuses to grant the Developer's application for an Approval; or
- (b) grants an Approval on Unacceptable Conditions,

the Developer may, at the Developer's Cost, appeal to the appropriate Court or Authority in respect of the refusing body's determination.

4.3 Construction Certificate for Landlord's Works

- (a) The parties acknowledge and agree that a construction certificate in respect of the Landlord's Works has not been issued as at the date of this agreement.
- (b) The Developer must provide to the Landlord an electronic copy of the final construction certificate in respect of the Landlord's Works as soon as practicable (and in any event no later than 10 Business Days) after the Developer receives the Construction Certificate, and the parties acknowledge and agree that such construction certificate shall, once provided to the Landlord in accordance with this clause 4.3, form part of the Plans and Specifications.

5 Works related matters

5.1 Independent Certifier

The Landlord, the Tenant and the Developer must each use all reasonable endeavours to enter into a deed with the Certifier in substantially the same form as the Draft Certifier Deed, subject to any amendments reasonably required by the Certifier, as soon as reasonably practicable after the date of this agreement.

5.2 Occupational health and safety

- (a) If the Developer (including if acting as agent for the Landlord) carries out on the Land, or procures to be carried out on the Land, works to which a Law relating to occupational health and safety applies:
 - (i) the Landlord appoints the Developer to any position under that Law necessary for the Developer to comply with that Law (including the position of principal contractor to the extent this is provided for by Law);
 - (ii) the Landlord authorises the Developer to exercise whatever authority is necessary for the Developer to discharge the responsibilities of the appointment under clause 5.2(a)(i);
 - (iii) the Developer must comply with, and must ensure that the works are carried out in accordance with, that Law; and
 - (iv) the Developer is responsible for the works at all times.
- (b) Without limiting clause 5.2(a), the Developer must comply with all Laws relating to occupational health and safety in respect of the Landlord's Works.

5.3 Vacation and management of existing occupants

- (a) Prior to the physical commencement of the Landlord's Works, the Developer must obtain vacant possession of the Building from the existing occupants in accordance with the terms of this clause 5.3.
- (b) The Landlord authorises the Developer to serve notices on the existing occupants of the Building, as agent for the Landlord (if necessary), to bring their occupation to an end and to facilitate their vacation of the Building. The Developer must comply with all statutory notice periods when serving notices pursuant to this clause 5.3.
- (c) Where necessary, the Developer must ensure that existing occupants of the Building are relocated to alternative accommodation.
- (d) The Landlord must provide all assistance reasonably required by the Developer to obtain vacant possession to allow the commencement of the Landlord's Works.

6 Landlord's Works

6.1 Carrying out of Landlord's Works

The Developer must:

- (a) procure the carrying out of the Landlord's Works:
 - (i) in a proper and workmanlike manner;
 - (ii) in accordance with the Plans and Specifications and all Base Building Approvals;
 - (iii) in accordance with the Australian Standards specified in the Plans and Specifications;
 - (iv) in accordance with those of the Building Code of Australia requirements which must be complied with; and
 - (v) in a manner which complies with the requirements of all relevant building site industrial awards, and conditions of such awards, relevant to the construction of the Landlord's Works;
- (b) comply with all Laws and all Requirements and directions of any relevant Authority in any way relating to the Landlord's Works, including that the Landlord's Works are only to be carried out during the hours permitted by the relevant Approvals;
- (c) ensure that all materials incorporated in the Landlord's Works:
 - (i) are of good quality;
 - (ii) are new, provided that they may contain recycled materials;
 - (iii) comply with the requirements of the Plans and Specifications; and
 - (iv) are free of Hazardous Substances;
- (d) ensure that all warranties and guarantees from:
 - (i) the Builder's subcontractors and suppliers in relation to the Landlord's Works are:
 - (A) assigned to the Landlord, from expiry of the Defect Liability Period (if such warranties and guarantees have not expired at that time);

- (B) enforced for the benefit of the Tenant and the Landlord, at the relevant party's request and Cost, if such warranties and guarantees cannot be assigned under clause 6.1(d)(i)(A); and
- (ii) the Builder in relation to the Landlord's Works are:
 - (A) assigned to the Landlord, from expiry of the Defect Liability Period (if such warranties and guarantees have not expired at that time);
 - (B) enforced for the benefit of the Tenant and the Landlord, at the relevant party's request and Cost, if such warranties and guarantees cannot be assigned under paragraph 6.1(d)(ii)(A) and
- (e) effect, or procure its Builder to effect, insurances (which insurances may be included in a global insurance policy) for:
 - (i) workers' compensation for people it employs for the amount required by Law;
 - (ii) public risk for an amount of not less than \$20,000,000 per event, such insurance policy to note the respective interests of the Landlord, Developer and any mortgagee of the Premises; and
 - (iii) contract works insurance for the Landlord's Works to the value of the Landlord's Works, noting the interests of the Landlord and covering the Landlord, the Developer, the Builder, and all consultants and subcontractors for their respective rights, interests and Liabilities;
- (f) produce to the Landlord evidence of the currency of those insurances as a condition of entering the Land to carry out the Landlord's Works;
- (g) repair and make good any damage which may be caused to the Landlord's Works and/or the Premises as a result of carrying out the Landlord's Works; and
- (h) use best endeavours to have the Landlord's Works completed by the Sunset Date.

6.2 Establishment of the Steering Committee

- (a) On the date of this agreement, the Steering Committee is established.
- (b) The Steering Committee will comprise at least two (2) representatives appointed by the Landlord and at least two (2) representatives appointed by the Developer.
- (c) Each party must give written notice of their appointed representative to the other party.
- (d) The Steering Committee must:
 - (i) meet at least once every month, unless otherwise agreed;
 - (ii) review and discuss any matters of concern to the Landlord or the Developer arising in respect of the Landlord's Works; and
 - (iii) otherwise, generally report on the progress of the Landlord's Works.
- (e) Each party is entitled to invite the Certifier, any of its consultants or other parties to attend a Steering Committee meeting for observation and information purposes only, with prior notice to the other party.
- (f) The Steering Committee is only intended to provide a forum for:
 - (i) consultation and information with regard to the Landlord's Works;
 - (ii) for the Landlord and the Developer to report to each other on their respective obligations under this agreement; and

- (iii) to assist in the resolution of any disputes between the Landlord and the Developer,

and the parties acknowledge and agree that the Steering Committee does not have any formal powers or control of the Landlord's Works.

6.3 Monthly progress report

- (a) The Developer must provide a monthly progress report to the Steering Committee in relation to the Landlord's Works, commencing from the date of this agreement (**Progress Report**), which may include, without limitation:
 - (i) the status of the Landlord's Works and the estimated timing of the completion of the Landlord's Works until the Date of Practical Completion;
 - (ii) reasonable details, events, milestones and activities of the Builder, consultants or sub-contractors which are relevant to the timing and quality of completion of the Landlord's Works, the progress of the Builder and the ability of the Builder to achieve Practical Completion in accordance with the development program;
 - (iii) potential and actual delays to Practical Completion;
 - (iv) any Variation to the Plans and Specifications;
 - (v) information in relation to any dispute in respect of the Landlord's Works;
 - (vi) any certifications issued by the Certifier; and
 - (vii) details of any Cost Overruns and the reasons for the Cost Overruns.
- (b) The parties agree that the Progress Reports which the Developer provides under this clause 6.2 may be a copy of the report which it receives from the Builder pursuant to the Construction Contract, and the Developer is not required to make any changes to the form of that report in order to submit it to the Steering Committee.

7 Variations

7.1 No Landlord Variations

- (a) The Landlord acknowledges and agrees that it is not entitled to request any Variations to the Landlord's Works.
- (b) The Landlord accepts that the Developer is entitled to make any Variations to the Landlord's Works subject to complying with the obligations set out in clause 6.1 and subject to the restrictions set out in clause 7.2.

7.2 Limitation on Variations to Landlord's Works

- (a) The Developer must not effect any Variation to the Landlord's Works (other than a Variation required by an Authority as a term of an Approval or by Law) which the Certifier determines would, if implemented, materially and detrimentally affect the quality and performance of the structure, services or electrical, hydraulic, plumbing or mechanical components of the Premises.
- (b) Subject to clause 7.2(a), the Developer is free to make such Variations as it deems appropriate to complete the Landlord's Works in accordance with the terms of this agreement.

8 Not used**9 Practical Completion of the Landlord's Works**

9.1 Notice of anticipated Practical Completion

The Developer must give the Landlord and the Certifier:

- (a) 30 days'; and then
- (b) 10 Business Days',

written notice of the date it anticipates Practical Completion will occur.

9.2 Joint inspection

- (a) Within 5 Business Days after service of each of the Developer's notices under clauses 9.1(a) and 9.1(b), the Landlord, the Developer and the Certifier must jointly inspect the Landlord's Works and note any defect in or unsatisfactory work forming part of the Landlord's Works requiring further work before Practical Completion can be achieved.
- (b) A failure to identify a defect in or unsatisfactory work forming part of the Landlord's Works during the inspections following the Developer's notices under clauses 9.1(a) or 9.1(b) does not preclude that defect or unsatisfactory work from being subsequently identified.

9.3 Issue of Practical Completion certificate

When the Developer requests the Certifier to inspect the Landlord's Works to determine whether Practical Completion has been achieved, and either:

- (a) the Certifier determines during the final joint inspection referred to in clause 9.2 that there is no Further Work required; or
- (b) the Certifier certifies that the Further Work has been completed,

then the Developer must procure that the Certifier issues a certificate stating that Practical Completion has been achieved and specifying the date on which it was achieved, and at that time Developer must procure that the Certifier also provides to the Landlord a comprehensive list of all outstanding Landlord's Works and defects which do not prevent Practical Completion from being achieved.

9.4 Final and binding

The certificate of Practical Completion issued by the Certifier is final and binding on the parties.

9.5 Occupancy Permits

The Developer must obtain from the relevant Authority the Occupancy Permit for the Premises and the Landlord must, as a precondition of the Developer complying with this clause 9.5, provide all assistance reasonably requested by any relevant Authority in relation to obtaining the Occupancy Permit described in this clause 9.5.

9.6 Other documents

The Developer agrees to provide to the Landlord, as soon as reasonably practicable after the Date of Practical Completion (in approved electronic format on CD or USB) copies of all warranties, guarantees, certificates, operating and maintenance manuals, documents, 'as built' documentation and other information reasonably required by the Landlord and which the Certifier has notified the Developer are, in the Certifier's reasonable opinion, essential for the use, occupation, operation and maintenance of the Building, including:

- (a) one set of all drawings and plans (including architectural drawings and service drawings for the air-conditioning, electrical, security, hydraulic and fire services) of the Building, as built;
- (b) one copy of all operation and maintenance manuals; and
- (c) a copy of all warranties in respect of the Landlord's Works.

10 Defect rectification

10.1 Not used

10.2 Notification of Defects

During the Defect Liability Period, the Landlord may Notify the Developer of any Defects of which the Landlord is aware.

10.3 Rectification of Defects

- (a) During the Defect Liability Period, the Developer must rectify all Defects which it notices, or which is Notified to it by the Landlord under clause 10.2 or are noted by the Certifier in the certificate of Practical Completion issued under clause 9.3, and clause 6.1 will apply to the carrying out of all Defect rectification work.
- (b) The Developer must promptly rectify any Defect it notices or which is Notified to it by the Landlord within a reasonable period, having regard to the nature of the Defect. The Landlord must not deny access to the Premises for the rectification of Defects.
- (c) The Developer must carry out rectification work at times and in a manner which does not cause the Landlord to be in breach under the Lease.

11 Payments

11.1 Total Financial Contribution

Subject to the terms of this clause 11, the respective Landlord entities agree to pay the Total Financial Contribution to the Developer to be used to pay for the Landlord's Works as follows:

- (a) Link Wentworth Housing Limited (ABN 62 003 084 928) to pay the LW Contribution; and
- (b) North Sydney Council (ABN 32 353 260 317) to pay the Council Contribution.

11.2 Payment of Initial Development Fees

Within 21 Business Days of the date of this agreement, the Landlord entities must pay their respective proportions of the Initial Development Fees to the Developer on account of the Landlord's Works and in consideration of any development works undertaken by the Developer prior to the date of this agreement, including the obtaining of Approvals, managing the design of the Building, negotiating with Authorities and tendering for the Landlord's Works and the Building Construction Costs incurred by the Developer prior to the date of this agreement.

11.3 Payment of the balance of the Total Financial Contribution

The Landlord entities must pay the remaining 20% balances of their respective proportions of the Initial Development Fees to the Developer within 21 Business Days of Practical Completion being certified by the Certifier in accordance with 9.3.

11.4 Certification of Building Construction Costs

- (a) The Developer will submit evidence of the amounts incurred after the date of this agreement on account of Building Construction Costs to the Certifier, with a copy to the Landlord, every month (**Monthly Costs Report**).
- (b) Within 5 Business Days after receipt of each Monthly Costs Report, the Certifier must certify to the Landlord and the Developer the amount of Building Construction Costs incurred during the relevant period (**Monthly Progress Certificate**).
- (c) At any time and from time to time, the Certifier may, by a further Monthly Progress Certificate, correct any error which has been discovered in any previous Monthly Progress Certificate.

11.5 Cost Overruns

The parties agree that Cost Overruns must be funded and borne by the Developer at its sole risk.

12 Change of ownership share

12.1 Ownership share

Upon receipt by the Developer of the last payment of the Total Financial Contribution, the Landlord entities jointly agree that the Land shall be held by the Landlord entities as tenants in common in the following shares:

- (a) North Sydney Council ABN 32 353 260 317 – 33% share; and
- (b) Link Wentworth Housing Limited ABN 62 003 084 928 – 67% share,

provided that Link Wentworth may at any time request North Sydney Council to consider varying the ownership shares if it is reasonable to do so having regard to all the relevant circumstances, and North Sydney Council agrees to consider such request promptly.

12.2 Documentation

The Landlord entities jointly agree to do anything reasonably necessary to document the change in share ownership including entering into a deed to formally document the change and updating the registered title for the Land at NSW Land Registry Services (if necessary).

13 The Lease

13.1 Grant of Lease

- (a) On the Commencement Date, the Landlord must grant, and the Tenant must take, a lease of the Premises in the form of the Lease completed and amended pursuant to this clause 13.
- (b) The Landlord and the Tenant are bound by the Lease from and including the Commencement Date even though:
 - (i) a party may not have signed the Lease;
 - (ii) the Lease may not have been prepared or completed in accordance with clause 13.2 (excluding any variation or amendment to the Lease expressly agreed between the Landlord and the Tenant); or
 - (iii) the Lease may not have been stamped, if applicable.

13.2 Completion of Lease

The Tenant hereby authorises the Landlord to complete the Lease by the insertion of:

- (a) the then current description of the Land on the front page (if necessary) of the Lease;
- (b) the Commencing Date and the Terminating Date on the front page of the Lease; and
- (c) such other details as may be necessary to complete the Lease in accordance with this agreement and enable it to be stamped, if required by Law, and registered at NSW Land Registry Services.

13.3 Execution of Lease

- (a) As soon as possible after the Commencement Date, the Landlord must:
 - (i) prepare the execution version of the Lease, in duplicate, following its completion in accordance with clause 13.2; and
 - (ii) deliver the Lease, in duplicate, to the Tenant,

and the Tenant must execute the Lease, in duplicate, no later than 2 months after receiving it from the Landlord.
- (b) As soon as possible after receiving the Lease, in duplicate, executed by the Tenant, the Landlord must:
 - (i) if stamp duty is payable, lodge the Lease in duplicate for stamping following receipt of the stamp duty payable on the Lease from the Tenant;
 - (ii) obtain the consent of any caveator of the Land (at its cost);
 - (iii) attend to registration of the lease at NSW Land Registry Services (if applicable); and
 - (iv) return the Tenant's original counterpart of the Lease to the Tenant's solicitor.

13.4 Financier's consent

Before using this agreement, the Land or the Landlord's Works as security prior to the Commencement Date, the Landlord must (at its cost) obtain the consent of any financier to whom it proposes to mortgage, charge or otherwise encumber the Land to:

- (a) this agreement;
- (b) the Lease; and
- (c) the registration of any caveat in regard to the Lease,

on terms reasonably acceptable to the Landlord, the financier and the Tenant.

14 Assignment**14.1 Dealings by Developer**

The Developer may not assign or novate its rights or obligations under this agreement or otherwise dispose of or deal with its rights or obligations under this agreement unless it obtains the prior written consent of the Landlord (such consent not to be unreasonably withheld).

14.2 Dealings by Tenant

The Tenant may not assign its rights or obligations under this agreement or otherwise dispose of or deal with its rights or obligations under this agreement unless it obtains the prior written consent of the Landlord and the Developer (such consent not to be unreasonably withheld).

14.3 Assignment by Landlord

- (a) The Landlord may not assign its rights or obligations under this agreement or otherwise dispose of or deal with its rights or obligations under this agreement unless it obtains the prior written consent of the Developer and the Tenant (such consent not to be unreasonably withheld).
- (b) Clause 14.3(a) does not prevent a novation by the Landlord of its rights and obligations under this agreement, provided that:
 - (i) the novatee is a Related Body Corporate of the one of the Landlord entities; and
 - (ii) the novatee enters into an agreement with the Developer and the Tenant whereby the Landlord releases the Developer and the Tenant from any liability arising out of this agreement and the novatee covenants to comply with the Landlord's obligations under this agreement as if it had been named as a party to this agreement.

15 Termination

15.1 Tenant's rights

If the Landlord fails to pay the relevant amount of the Total Financial Contributions within 21 Business Days after the relevant due date pursuant to clause 11, the Tenant may do any one or more of the following:

- (a) exercise its rights to step in and recover its costs of doing so under clause 15.4;
- (b) terminate this agreement;
- (c) recover from the Landlord any loss suffered by the Tenant as a result of the Landlord's default; and
- (d) exercise any of its other legal rights.

15.2 Sunset Date

If the Landlord's Works have not reached Practical Completion by the Sunset Date, the Landlord, the Tenant or the Developer may terminate this agreement by written notice to all other parties and that termination will be without prejudice to any action which a party may take against the other, including Claims for damages.

15.3 Insolvency Event

- (a) If an Insolvency Event occurs in relation to the Landlord, then the Developer or the Tenant may terminate this agreement and that termination will be without prejudice to any other action which the Developer or the Tenant may take against the Landlord or any other party, including Claims for damages.
- (b) If an Insolvency Event occurs in relation to Developer or the Tenant, then the Landlord may terminate this agreement and that termination will be without prejudice to any other action which the Landlord may take against the Developer or the Tenant or any other party, including Claims for damages.

15.4 Step in and set-off rights

- (a) If the Landlord fails to pay any moneys payable by it (whether those moneys are payable pursuant to this agreement or the Lease) (**Money Owed**) within 10 Business Days of their becoming due, the Developer (after giving a further 5 Business Days' notice to the Landlord specifying that the Developer will rely on its rights under this clause 15.4(a)) is entitled, and the Landlord irrevocably authorises Developer, to:
- (i) if the Money Owed is payable to a counterparty to the relevant document that is not the Developer or the Tenant, step in and pay the Money Owed to the relevant counterparty instead of the Landlord; and / or
 - (ii) set off the Money Owed, plus the Developer's or the Tenant's (as relevant) reasonable and proper cost of remedying the Landlord's failure to pay the Money Owed, plus interest payable on the Money Owed and costs calculated at the BBSY Rate plus 2% per annum capitalised on the last day of each month if unpaid from the due date for payment until payment is actually received (**Total Money Owed**), against any moneys the Developer or the Tenant is liable to pay to the Landlord under this agreement or the Lease.
- (b) Any dispute as to the exercise of the Developer's rights under clause 15.4(a) must be referred for resolution in accordance with clause 21.
- (c) The parties agree that the provisions of this clause 15.4 bind each of their successors, assigns and mortgagees of their respective interests under this agreement. This clause is not to prejudice any other provision of this agreement running with the Land.
- (d) Despite any provision of this agreement and in addition to the Developer's and the Tenant's rights under clause 15.4(a), the Developer or the Tenant (as relevant) may elect not to exercise the right to set off under clause 15.4(a) and in lieu thereof give notice to the Landlord that the Developer or the Tenant (as relevant) is released and forever discharged from the liability to pay the moneys the Developer or the Tenant (as relevant) is liable to pay to the Landlord under this agreement for the period until the date when the Total Money Owed, set off on a daily basis against the moneys the Developer or the Tenant is liable to pay to the Landlord under this agreement and the Lease, will be exhausted.

16 Survival of rights and obligations

- (a) Rights and obligations under this agreement that are outstanding at the Commencement Date are not affected by the commencement of the Lease.
- (b) Where this agreement is terminated pursuant to clause 15, the provisions of clauses 16, 17, 18, 19, 20 and will continue to operate and bind the parties despite that termination.

17 General

17.1 Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this agreement:

- (a) must be in writing;
- (b) must be addressed as set out in the notices section of the Reference Schedule (or as otherwise notified by that party to each other party from time to time);
- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent (or, in the case of the Developer, the National Development Manager – Non Retail) of that party;

- (d) must be delivered or posted by prepaid post to the address, or sent by email to the email address of the addressee, in accordance with clause 17.1(b); and
- (e) are taken to be received by the addressee:
 - (i) (in the case of prepaid post) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting by airmail to an address outside Australia;
 - (ii) (in the case of email) at the local time (in the place of receipt of that email) which then equates to the time that email is sent unless a transmission report produced by the machine from which that email is sent advises that the transmission of that email did not occur, unless that local time is outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 17.1(b), unless that delivery is made outside Business Hours, when that communication is taken to be received at 9.00 am on the next Business Day.

17.2 Governing law

- (a) This agreement is governed by and must be construed according to the law applying in the State.
- (b) Any present or future legislation which operates to vary the obligations of the Developer or the Tenant in connection with this agreement with the result that the Landlord's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

17.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 17.3(a).

17.4 Expenses

Except as expressly specified to the contrary, each party will be responsible for and must pay their own expenses (including legal fees, Costs and disbursements) incurred in connection with negotiating, preparing and executing this agreement, and any subsequent consent, agreement, approval, waiver or amendment relating to this agreement.

17.5 Duty

- (a) The Landlord, as between the parties, is liable for and must pay, and indemnifies the Developer and the Tenant against Liability for, all Duty payable or assessed on or in connection with:
 - (i) this agreement;
 - (ii) any document executed under or required or contemplated by this agreement, other than the Lease;
 - (iii) any transaction evidenced, effected or contemplated by any document referred to in this clause 17.5(a), other than the Lease.

- (b) If the Developer or the Tenant pays any Duty referred to in clause 17.5(a), in whole or in part, the Landlord must reimburse the paying party immediately on demand.

17.6 Interest

If:

- (a) a party (**First Party**) does not pay an amount payable under any provision of this agreement to another party to this agreement (**Second Party**), when it is due; and
- (b) the Second Party issues a notice, at any time subsequently, to the First Party requiring the First Party to pay interest within 5 Business Days from the date of receipt of the notice; and
- (c) the First Party fails to pay the amount due within that period of 5 Business Days,

the First Party must pay interest on that amount to the Second Party on demand, such interest to be calculated from the date of expiry of 5 Business Days from the date of service of the Second Party's notice given under clause 17.6(b) until the amount is paid in full. Interest is calculated on daily balances at the BBSY Rate plus 2% per annum and is capitalised on the last day of each month if unpaid.

17.7 Indemnity

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

17.8 Entire understanding

- (a) This agreement contains the entire understanding between the parties as to the subject matter of this agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this document are merged in and superseded by this agreement and are of no effect. No party is liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another:
 - (i) affects the meaning or interpretation of this agreement; or
 - (ii) constitutes any collateral agreement, warranty or understanding between any of the parties.

17.9 Employees

Each party must ensure that its Employees comply, if appropriate, with that party's obligations under this agreement.

17.10 Cause

If this agreement says that a party must not do something, that party must not do anything which could result in that thing happening.

17.11 Amendments

This agreement may only be varied by an agreement executed by or on behalf of each party.

17.12 Counterparts

This agreement may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

17.13 Waiver

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

17.14 Further acts and documents

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

17.15 Consents

A consent required under this agreement from a party must not be unreasonably withheld or delayed, unless this agreement expressly provides otherwise.

17.16 Prior breaches

Rights in connection with a breach of this agreement are not affected by termination or expiry of this agreement or the commencement of the Lease.

17.17 Severance

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

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

18 Confidentiality

18.1 Confidentiality obligation

The parties must keep the Confidential Information absolutely confidential.

18.2 Permitted disclosure

- (a) Despite clause 18.1, the parties may without the approval of the other parties, disclose the Confidential Information:
 - (i) to their employees to whom it is necessary to discuss the Confidential Information;
 - (ii) to Related Bodies Corporate (as defined in the Corporations Act);

- (iii) as required by law or in accordance with the requirements of a recognised stock exchange;
 - (iv) to the parties' auditors for the purposes of an audit of that party's affairs; and
 - (v) to its professional consultants or for the purposes of obtaining professional advice or services in relation to this agreement.
- (b) A party who discloses Confidential Information under clause 18.2 must:
- (i) inform any person to whom the Confidential Information is disclosed of the confidential nature of the Confidential Information and of its obligations under this agreement; and
 - (ii) before disclosing any Confidential Information to a person, take reasonable steps to ensure that they comply with that party's obligations under this agreement.
- (c) If any Confidential Information is published or otherwise enters the public domain the parties are still bound by this agreement in relation to all the rest of the Confidential Information.
- (d) If an individual item of information is in the public domain, particular combinations of information (including information which is or is not in the public domain) are not regarded as being in the public domain.
- (e) The parties will consult with one another prior to making any necessary notifications to a recognised stock exchange, and will not make any press releases in relation to this agreement or the transactions contemplated by this agreement without obtaining the prior written consent of the other party (which consent will not be unreasonably withheld or delayed).

19 GST

- (a) In this clause, words and expressions which have a defined meaning in the GST Law have the same meaning as in the GST Law.
- (b) Despite the definition of consideration in the GST Law, and unless otherwise expressly stated in this agreement, prices or other sums payable or consideration to be provided under or in accordance with this agreement are exclusive of GST.
- (c) If a party makes a taxable supply under or in connection with this agreement, the other party must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply.
- (d) The supplier must, as a precondition to the payment of GST under clause 19(c), give the other party a tax invoice.
- (e) If an adjustment event arises in connection with a supply made under this agreement, the supplier must give the other party an adjustment note in accordance with the GST Law.
- (f) If this agreement requires one party to pay an amount that is in reimbursement of, or calculated by reference to, any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid by the first party will be calculated using the amount of the expense, loss or outgoing reduced by the amount of input tax credits (if any) to which the other party (or the representative member of its GST group) is entitled in respect of that amount.

20 Warranties

Each party warrants to each other party that:

- (a) it has full power and authority to enter into this agreement;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this agreement in accordance with its terms;
- (c) its obligations under this agreement are legally valid and binding and are enforceable against it in accordance with its terms;
- (d) the execution, delivery and performance of this agreement by a party will not violate any provision of any Law, its constitution or any encumbrance or other deed which is binding on the party; and
- (e) if a person executes this agreement on behalf of a party, that person has authority to enter into this agreement on behalf of that party.

21 Dispute resolution

21.1 First stage

- (a) If a dispute arises between the parties in relation to any matter under this agreement (except a question of law (including an interpretation of the clauses of this agreement) and except a matter specified to be determined by the Certifier):
 - (i) any party seeking resolution of the dispute must give a Dispute Notice to each other party involved in the dispute, setting out sufficient details of the dispute; and
 - (ii) the dispute shall be referred to the Steering Committee, which must meet within 5 Business Days after that Dispute Notice is given and use its best endeavours to resolve the dispute.
- (b) If the dispute is not resolved by the Steering Committee or the Steering Committee have not met within 15 Business Days after receipt of the Dispute Notice referred to in this clause 21.1, any party may by notice to each other party involved in the dispute (**Dispute Referral Notice**), refer the dispute for determination under clause 21.2.

21.2 Expert determination

The following applies in the case of any dispute referred for determination under this clause:

- (a) the dispute must be referred to a person agreed on by the parties, but if the parties do not agree within 5 Business Days after the Dispute Referral Notice is given, then to a person appropriately qualified to deal with the dispute nominated at the request of a party by the President and appointed by any party;
- (b) a person will be appropriately qualified for the purposes of this clause if he or she:
 - (i) has the requisite professional or academic qualifications as agreed by the parties or determined by the President;
 - (ii) is a principal or partner of a major or specialised firm or corporation in the central business district of the State dealing with matters the subject of the dispute; and
 - (iii) has had not less than 10 years' immediate past experience in dealing with matters the subject of the dispute;

- (c) the person will be instructed by the party appointing them to:
 - (i) act as an expert and not as an arbitrator;
 - (ii) subject to complying with the provisions of this clause 21.2, proceed in any manner he or she thinks fit;
 - (iii) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
 - (iv) examine such documents, and interview such persons, as he or she may require; and
 - (v) make such directions for the conduct of the determination as he or she considers necessary;
- (d) the person must be instructed by the party appointing them to:
 - (i) disclose to the parties any interest he or she has in the outcome of the determination; and
 - (ii) not communicate with one party to the determination without the knowledge of the other;
- (e) if the person discloses that he or she has an interest in the outcome of the determination, either party may refuse to have the person appointed to determine disputes under this agreement and the process under this clause 21.2 will apply again;
- (f) each party will:
 - (i) bear its own costs in respect of any expert determination under this clause 21.2; and
 - (ii) pay the determining person's costs in accordance with his or her direction as to such payment or, in the absence of a direction, in equal shares;
- (g) unless otherwise agreed between the parties, the person must be instructed by the party appointing them to notify the parties of his or her decision upon an expert determination conducted under this clause 21 within 20 Business Days from the date of his or her appointment; and
- (h) the determination of the person:
 - (i) must be in writing; and
 - (ii) will be final and binding.

21.3 Running of time

- (a) Where it has been determined pursuant to clause 21.2 that actions taken by a party were not in compliance with its obligations under this agreement, that party must, as soon as practicable, take action which is in compliance with its obligations under this agreement and any time limits applicable to any response to that action by another party shall apply as from the date such actions were taken in compliance with this agreement.
- (b) Each party must continue to comply with its obligations under this agreement despite the dispute.
- (c) Neither party may make any Claim or demand or commence any proceedings (except for urgent injunctive relief) against another party in respect of the subject matter of a dispute until such time as the procedure under this clause 21 has been completed in respect of that dispute.

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

Page 28

Development Management Agreement

Reference: MG 4724933
Legal/74218891_11

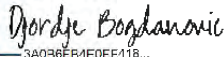
Executed as an agreement
Landlord:
Executed by Link Wentworth Housing Limited ABN 62 003 084 928 in accordance with section 127 of the *Corporations Act 2001* (Cth);

DocuSigned by:

315F8804740E1FC...

Director
Simon Carlisle Maughan Wright

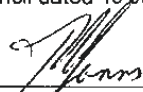
Name of Director
BLOCK LETTERS

DocuSigned by:

3A036FB1E0FE118...

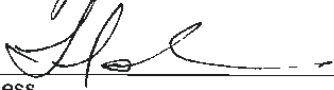
*Director/*Company Secretary
Djordje Bogdanovic

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed for and on behalf of North Sydney Council ABN 32 353 260 317 by its authorised delegate in accordance with the resolution of the council dated 10 July 2023.


Authorised Delegate

THERESE MANNS, GENERAL MANAGER
Name of Authorised Delegate


Witness

LINDA FORBES
NAME OF AUTHORISED WITNESS

Developer:

Executed by Link Wentworth Housing Limited ABN 62 003 084 928 in accordance with section 127 of the *Corporations Act 2001* (Cth):

DocuSigned by:
Simon Carlisle Maughan Wright
315F88D474DE4F0...

Director
Simon Carlisle Maughan wright

Name of Director
BLOCK LETTERS

DocuSigned by:
Djordje Bogdanovic
3A036FE1E0FE118...

*Director/*Company Secretary
Djordje Bogdanovic

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Tenant:

Executed by Link Wentworth Housing Limited ABN 62 003 084 928 in accordance with section 127 of the *Corporations Act 2001* (Cth):

DocuSigned by:
Simon Carlisle Maughan Wright
315F88D474DE4F0...

Director
Simon Carlisle Maughan wright

Name of Director
BLOCK LETTERS

DocuSigned by:
Djordje Bogdanovic
3A036FE1E0FE118...

*Director/*Company Secretary
Djordje Bogdanovic

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Annexure A**Plans and Specifications**

This Annexure A incorporates those plans uploaded to the SharePoint accessible from the following website link: <https://protect-au.mimecast.com/s/9JmBC2xM8XU8pxxAHnR3FX?domain=linkhousingltd.sharepoint.com> under the headings "Drawings" and "Specifications", and index of which is set out below.

Architectural

File	No	Title	Rev	Status	Discipline	Organization	Type
	DA1001 C	Site Plan	C	Section 4.55 Mod	Architectural	Become	
	DA2001 C	Lower Ground and Ground Floor	C	Section 4.55 Mod	Architectural	Become	
	DA2002 C	Level 1 and Level 2 Plan	C	Section 4.55 Mod	Architectural	Become	
	DA3101 D	North and South Elevations	D	Section 4.55 Mod	Architectural	Become	
	DA3102 C	East and West Elevations	C	Section 4.55 Mod	Architectural	Become	
	DA3200 C	Sections	C	Section 4.55 Mod	Architectural	Become	
	A-100 L	General Arrangement Plan – Lower Ground and Ground	L	Issued for Tender	Architectural	Become	
	A-101 K	General Arrangement Plan – Level 01 & Level 02	K	Issued for Tender	Architectural	Become	
	A-102 F	General Arrangement Plan – Roof	F	Tender	Architectural	Become	
	A-400 E	General Arrangement Elevations	E	Issued for Tender	Architectural	Become	
	A-420 F	General Arrangement Sections	F	Issued for Tender	Architectural	Become	
	A-420	General Arrangement Sections – Sydney Water Easement	J	Front Entry Amendments	Architectural	Become	

Landscaping

File	No	Title	Rev	Status	Discipline	Organization	Type
	L/01	Ground Floor	10/08/22		Landscaping	ATC	
	L/02	Lower Ground Floor	10/08/22		Landscaping	ATC	
	L/03	Level 2	10/08/22		Landscaping	ATC	
	L/04	Landscape Details	10/08/22		Landscaping	ATC	

Structural

File	No	Title	Rev	Status	Discipline	Organization	Type
	1000	Footing & Piling Plan	10	For Construction	Structural	Sellick Consultants	
	1001	Lower Ground Marking Plan	11	For Construction	Structural	Sellick Consultants	
	1005	Shoring Details Sheet 1	3	Not for Construction	Structural	Sellick Consultants	
	1081	Footing Details Sheet 1	4	Not for Construction	Structural	Sellick Consultants	
	1100	Ground Marking Plan	9	For Construction	Structural	Sellick Consultants	
	1200	Level 1 Marking Plan	4	Not For Construction	Structural	Sellick Consultants	
	1301	Level 2 Marking Plan	4	Not For Construction	Structural	Sellick Consultants	

Electrical

File	No	Title	Rev	Status	Discipline	Organization	Type
200010	E001	Legend of Symbols and General Notes	A	Tender Issue	Electrical	JHA	
200010	E003	Single Line Diagram	A	Tender Issue	Electrical	JHA	
200010	E004	Schematics Detail Sheet 1	A	Tender Issue	Electrical	JHA	
200010	E005	Schematics	A	Tender Issue	Electrical	JHA	
200010	E100	Lower Ground and Ground Floor Lighting Layout	A	Tender Issue	Electrical	JHA	

Mechanical

File	No	Title	Rev	Status	Discipline	Organization	Type
200010	E101	Level 1 & Level 2 Lighting Layout	A	Tender Issue	Electrical	JHA	
200010	E200	Lower Ground and Ground Floor Power, Communications and Security Layout	A	Tender Issue	Electrical	JHA	
200010	E201	Level 1 & Level 2 Power, Communications and Security Layout	A	Tender Issue	Electrical	JHA	
200010	E202	Roof Plan Power, Communications and Security Layout	A	Tender Issue	Electrical	JHA	

Hydraulic

File	No	Title	Rev	Status	Discipline	Organization	Type
	H001	Site Plan	A	Tender Issue	Hydraulic Services	JHA	
	H002	Scope of Works	A	Tender Issue	Hydraulic Services	JHA	
	H100	Lower Ground and Ground Sanitary Drainage and Stormwater Layout	A	Tender Issue	Hydraulic Services	JHA	
	H101	Level 1 & Level 2 Sanitary Drainage and Stormwater Layout	A	Tender Issue	Hydraulic Services	JHA	
	H102	Roof Sanitary Drainage and Stormwater Layout	A	Tender Issue	Hydraulic Services	JHA	
	H200	Lower Ground and Ground Pressure Services Layout	A	Tender Issue	Hydraulic Services	JHA	
	H201	Level 1 & Level 2 Pressure Services Layout	A	Tender Issue	Hydraulic Services	JHA	
	H202	Roof Pressure Services Layout	A	Tender Issue	Hydraulic Services	JHA	
	H300	Detail Sheet 1	A	Tender Issue	Hydraulic Services	JHA	
	H301	Detail Sheet 2	A	Tender Issue	Hydraulic Services	JHA	

Fire

File	No	Title	Rev	Status	Discipline	Organization	Type
	F001	Legend of Symbols and General Notes	A	Tender Issue	Fire Protection Services	JHA	
	F100	Lower Ground and Ground Floor Fire Services Layout	A	Tender Issue	Fire Protection Services	JHA	
	F101	Level 1 and Level 2 Fire Services Layout	A	Tender Issue	Fire Protection Services	JHA	
	F102	Roof Layout	A	Tender Issue	Fire Protection Services	JHA	

Mechanical

File	No	Title	Rev	Status	Discipline	Organization	Type
	M001	Legend of Symbols and General Notes	A	Tender Issue	Mechanical Services	JHA	
	M002	Scope of Works and Equipment Schedule	A	Tender Issue	Mechanical Services	JHA	
	M003	Equipment Schedules	A	Tender Issue	Mechanical Services	JHA	
	M100	Lower Ground and Ground Floor Air Conditioning and Ventilation Layout	A	Tender Issue	Mechanical Services	JHA	
	M101	Level 1 and Level 2 Air Conditioning and Ventilation Layout	A	Tender Issue	Mechanical Services	JHA	

File	No	Title	Rev	Status	Discipline	Organization	Type
	M102	Roof Layout	A	Tender Issue	Mechanical Services	JHA	
	M201	Details Sheet	A	Tender Issue	Mechanical Services	JHA	
			A	Tender Issue	Mechanical Services	JHA	

Architectural Specifications

- Architectural Technical Specification
- Door Hardware Schedule
- Paint Specification
- Waterproofing Specification

Fire Specification

- Engineering Specification for Fire Services – Issue B – Tender Issue

Electrical Specification

- Engineering Specification for Electrical Services – Issue A – Tender Issue

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

Page 37

Annexure B
Lease

Development Management Agreement

Reference: MG 4724933
Legal/74218891_11

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA
 Form: 07L
 Release: 4.7

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 Insert Duties Assessment No. as issued by Revenue NSW Office.

Duties Assessment No.

(A) TORRENS TITLE	Property leased Folio Identifier 5/4206	
(B) LODGED BY	Document Name, Address or DX, Telephone, and Customer Account Number if any. Collection Box Email: Reference:	CODE L

(C) **LESSOR**
 Link Wentworth Housing Limited ABN 62 003 084 928 and North Sydney Council
 ABN 32 353 260 317

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

(D) Encumbrances (if applicable):

(E) **LESSEE**
 Link Wentworth Housing Limited ABN 62 003 084 928

(F) **TENANCY:**

- (G) 1. **TERM**
 2. **COMMENCING DATE**
 3. **TERMINATING DATE**
 4. With an **OPTION TO RENEW** for a period of N.A.
 set out in clause N.A. of N.A.
 5. With an **OPTION TO PURCHASE** set out in clause N.A. of N.A.
 6. Together with and reserving the **RIGHTS** set out in clause N.A. of N.A.
 7. Incorporates the provisions or additional material set out in **ANNEXURE(S)** A hereto.
 8. Incorporates the provisions set out in N.A.
 No. N.A.
 9. The **RENT** is set out in item No. 4 of Reference Schedule

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

DATE

(H)

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: See Annexure A - page 13

Authority:

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.

Company: See Annexure A - page 13

Authority:

Signature of authorised person:

Signature of authorised person:

Name of authorised person:

Name of authorised person:

Office held:

Office held:

(I) **STATUTORY DECLARATION***

I

solemnly and sincerely declare that—

1. The time for the exercise of option to _____ in expired lease No. _____ has ended; and
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 provisions of the Oaths Act 1900.

Made and subscribed at _____ in the State of New South Wales on _____
in the presence of _____ of _____,

Justice of the Peace (J.P. Number: _____) Practising Solicitor

Other qualified witness [specify] _____,

who certifies the following matters concerning the making of this statutory declaration by the person who made it:

1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was a _____ [Omit ID No.]

Signature of witness:

Signature of applicant:

* As the services of a qualified witness cannot be provided at lodgment, the declaration should be signed and witnessed prior to lodgment. # If made outside NSW, cross out the witness certification. If made in NSW, cross out the text which does not apply.

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

This and the following pages constitute Annexure A referred to in the Lease between North Sydney Council ABN 32 353 260 317 and Link Wentworth Housing Limited ABN 62 003 084 928 (Lessors) and Link Wentworth Housing Limited ABN 62 003 084 928 (Lessee)

We certify this dealing correct for the purposes of the *Real Property Act 1900*.

Dated

202__

Reference Schedule

Item 1 Lessors	Name: Link Wentworth Housing Limited ABN 62 003 084 928 and North Sydney Council ABN 32 353 260 317 Address: 200 Miller Street, North Sydney, 2060 Email Council@northsydney.nsw.gov.au For the attention of: General Manager, North Sydney Council
Item 2 Lessee	Name: Link Wentworth Housing Limited Address: Level 10, 67 Albert Avenue, Chatswood NSW 2067 Email; Sean.Carty@linkwentworth.org.au For the attention of: Sean Carty
Item 3 Demised Premises	Lot 5 in Deposited Plan 4206, located at 287 Miller Street, Cammeray NSW 2062
Item 4 Rent	\$1.00 per annum
Item 5 Permitted Use	Social and affordable housing
Item 6 Term	49 years

THOMSON GEER

287 Miller Street
Page 3 of 15

Reference:
Legal/74188556_8

1 Definitions

Council means North Sydney Council ABN 32 353 260 317.

Deed of Agreement means the development management agreement between the Lessor and the Lessee dated .

Demised Premises has the meaning given in Item 3.

Permitted Use has the meaning given in Item 5.

Rent has the meaning given in Item 4.

2 Grant and Rent

2.1 Grant

The Lessor leases the Demised Premises to the Lessee for the Term.

2.2 Rent

The Lessee must pay to the Lessor the Rent on demand.

3 Exclusion of Statutory Provisions

3.1 Implied Covenants Negatived

None of the covenants and powers implied in leases by virtue of sections 84, 84A and 85 of the *Conveyancing Act 1919* (NSW) (as amended) shall apply to this Lease except insofar as the same or some parts thereof are embodied in the covenants and powers hereinafter contained.

3.2 Residential Tenancies Act

The parties acknowledge that the Lessor and the Lessee are Social Housing Providers under section 136 of the *Residential Tenancies Act 2010* (NSW), and that section 156 of the *Residential Tenancies Act 2010* (NSW) applies to this Lease such that this Lease is exempted from the operation of the *Residential Tenancies Act 2010* (NSW).

4 Permitted Use of Demised Premises

4.1 Permitted Use

The Demised Premises shall be subleased in accordance with the Permitted Use in accordance with the provisions of the Deed of Agreement.

4.2 Assignment and Transfer

- (a) The Lessee covenants and agrees not to assign, transfer, mortgage, charge, part with possession of or otherwise deal with or dispose of the Demised Premises or any part thereof, or by any act or deed procure the Demised Premises or any part thereof to be assigned, transferred, mortgaged, charged or put into possession of any person or persons without the Councils prior written consent PROVIDED THAT such consent shall not be unreasonably withheld where:

Reference:

THOMSON GEER

287 Miller Street
Page 4 of 15

Legal/74188556_8

- (i) the Lessee is not in default under the Lease;
 - (ii) the proposed assignee or transferee is a respectable, responsible, solvent company or person;
 - (iii) the proposed assignee or transferee is registered as a Tier 1 community housing provider as that term is defined in the Tier Guidelines published by the New South Wales Registrar of Community Housing pursuant to the *Community Housing Providers (Adoption of National Law) Act 2012* (NSW) or such equivalent registration status granted pursuant to any successive guidelines or legislation;
 - (iv) provided that the Demised Premises or part thereof shall only be used for the purpose permitted by this Lease; and
 - (v) that such proposed assignee or transferee shall enter into a Deed of Covenant (which shall be prepared by the Council) to observe and comply with the covenants, terms and conditions of this Lease
- (b) The Lessors jointly and each of them separately covenants and agrees not to assign, transfer, mortgage, charge or otherwise deal with or dispose of the Demised Premises or any part thereof without first providing the Lessee with six (6) months' written notice of such intention.

4.3 Premises not to remain vacant

The Lessee shall not cause or permit the Demised Premises or any part thereof to remain unoccupied for any period exceeding one (1) month without the prior written consent of the Lessors which consent shall not be unreasonably held.

4.4 No noxious use of Premise

The Lessee covenants and agrees that it shall not at any time during the continuance of this Lease do or permit any use act or thing whatsoever in upon or about the Demised Premises or any part thereof which is illegal or which shall or may be to the annoyance, nuisance, damage or disturbance of owners or occupiers of adjacent premises.

4.5 Subletting

- (a) The Lessee shall not sublet or grant any licence affecting the Demised Premises or any part thereof except to persons eligible for affordable housing.
- (b) The Lessee may grant subleases of the Demised Premises to persons eligible for affordable housing without the prior consent of the Lessors, provided that such subleases shall be in a form approved by the Council or shall be the current Residential Lease Agreement produced by the Real Estate Institute of New South Wales.
- (c) The Lessee shall collect the rents from the sub tenants which shall be deposited in a separate fund for the payment of outgoings and otherwise in compliance with the terms of the Deed of Agreement.

5 Quiet Enjoyment

5.1 Quiet Enjoyment

Upon the Lessee paying the Rent hereby reserved and duly and punctually observing and performing the covenants, obligations and provisions in this Lease on the part of the Lessee then the Lessee may peaceably possess and enjoy the Demised Premises for the term hereby granted without interruption or disturbance by the Lessors PROVIDED ALWAYS that the Lessors shall have right of access in accordance with the provisions of this Lease.

THOMSON GEER

287 Miller Street
Page 5 of 15

Reference:

Legal/74188556_8

6 Rates and other charges

6.1 Rates and Taxes

The Lessee covenants and agrees to promptly pay all rates, taxes, charges and assessments which at any time during the term of this Lease are charged upon the Demised Premises, or upon the Lessors or the Lessee that directly relate to the Demised Premises, unless otherwise specified herein. Where any such rate, tax, charge or assessment has been paid by the Lessors then the Lessee shall forthwith pay or reimburse to the Lessors the amount of such payment on demand in writing by the Lessors.

6.2 Charges for Services

The Lessee covenants and agrees to promptly pay all charges for electricity, gas, excess water and telephone services (if any) as well as all other charges imposed or charged by any public utility or authority from time to time in respect of services supplied to the Demised Premises, unless otherwise specified herein.

6.3 Excess charges

The Lessee shall be liable for any excess water rates whether or not they result from defects of a structural nature or from defective fixtures and fittings, the Lessee being responsible for maintenance, repair and care of the Demised Premises pursuant to clause 7 of this Lease.

7 Maintenance, Repair and Care of the Demised Premises

7.1 Repair of Demised Premises during Lease

The Lessee covenants and agrees that it shall, during the whole of the term of the Lease and otherwise so long as the Lessee may remain in possession, when, where and so often as need shall be required, maintain, replace, repair and keep the whole of the Demised Premises in good and substantial repair and working order and condition (having regard to their condition at the commencement of the Lease) and, particularly, all plate glass (if any), equipment (if any), appliances, fixtures and fittings therein.

7.2 Repair of wilful damage

The Lessee covenants and agrees that it shall, during the whole of the term of this Lease and otherwise for so long as the Lessee may remain in possession, be responsible for and shall, at its own cost, promptly repair and make good any wilful damage of whatsoever nature to the Demised Premises.

7.3 Inspection Record

Prior to the commencement of this Lease, the Lessors may at their discretion inspect the Demised Premises, making a record of the cleanliness, state of repair and working order of appliances, and shall record details of the condition of the demised premises on an inspection record form. Two copies of this record shall be signed by the Lessors and delivered to the Lessee before the commencement of this Lease. The Lessee shall check the record, noting any discrepancy, and sign and return one copy to the Lessors within seven (7) days of commencement of this Lease.

7.4 Repair on Termination of Lease

The Lessee covenants and agrees that it shall, at the expiration or sooner determination of this Lease, peaceably surrender and yield up to the Lessors the whole of the Demised Premises in good and substantial repair order and condition in all respects (having regard to their condition at the commencement of the Lease and the inspection record form (if applicable), and clean and free

from rubbish PROVIDED THAT damage by fire, flood, lightning, storm, tempest, reasonable wear and tear and structural defects not caused by the Lessee shall only be excepted.

7.5 **Cleaning**

Without affecting the generality of clauses 7.6 and 7.7, the Lessee covenants and agrees to clean and keep clean the interior and exterior of all buildings and improvements erected on the Demised Premises.

7.6 **Lessee's compliance with Regulations, Ordinances etc**

The Lessee, at its own expense, shall observe and comply with all notices, orders, directions and proclamations which may be made given, notified or ordered by any Council, Government or statutory body or authority relating to the Demised Premises or any part thereof relating to or arising out of the use and occupation thereof by the Lessee PROVIDED however that the Lessee shall not be responsible or carry out any work to the Demised Premises which is of a structural or capital nature, which shall be the Lessors' joint responsibility.

7.7 **General provisions**

The Lessee covenants and agrees as follows:

- (a) to keep clean and free all drains and waste pipes in or upon the Demised Premises;
- (b) not to use or permit to be used the lavatories, toilet, sinks, drainage and other plumbing facilities in the Demised Premises for any purposes other than those for which they were constructed or provided;
- (c) to give the Lessors prompt notice in writing of any breakages to or defects in the water pipes or electrical fittings or in any services, as well as any circumstances likely to cause any danger, risk or hazard;
- (d) to keep all trees plants and lawns (if any) in the Demised Premises in a reasonably good and substantial condition;
- (e) to take all responsible actions to keep the Demised Premises free of rodents, vermin, insects and pests;
- (f) to notify the Lessors promptly of any infectious disease or illness being a notifiable disease or illness under any State Legislation occurring in the Demised Premises.

7.8 **Lessors right to repair**

If the Lessee fails to comply with its obligations under this clause, the Lessors may serve upon the Lessee a notice in writing of any defects requiring the Lessee forthwith to repair the same and in default of the Lessee so doing it shall be lawful for the Lessors with fourteen (14) days prior notice to enter and execute the repairs by its contractors or agents and all reasonable costs and expenses of carrying out such work shall forthwith be payable by the Lessee to the Lessors.

7.9 **Fences**

The Lessee shall keep up fences and shall comply with all and every requirement on the part of the Lessors to contribute to the cost of erecting, repairing or keeping in repair any dividing fence or as otherwise specified herein.

8 Access

8.1 Lessors' Right of Access

The Lessors shall have access in the following circumstances:

- (a) immediately and without notice when, in the opinion of the Lessors, there is an emergency which threatens life or substantial damage in or upon the Demised Premises;
- (b) with fourteen (14) days' prior notice, to carry out repairs;
- (c) not more than four (4) times per annum, with fourteen (14) days' prior notice, for the purpose of ascertaining whether the Lessee is complying with the provisions of this Lease or to view the state of repair of the Demised Premises, and otherwise as agreed between the parties pursuant to a concurrent funding agreement (if any); and
- (d) in accordance with any notice issued by the Lessors with respect to any breach or default by the Lessee.

9 Alterations and Additions

9.1 No alterations without consent

- (a) The Lessee covenants and agrees that it shall not erect or construct upon the Demised Premises or any part thereof any building, structure or improvement, nor carry out any alteration to any building, structure or improvement on the Demised Premises or any part thereof, without prior written consent from the Council.
- (b) The Council shall not unreasonably withhold consent.
- (c) The cost of any such building structure or improvement consented to by the Lessors shall be borne by the Lessee.
- (d) The works shall be carried out by qualified tradesmen and in accordance with plans and specifications approved in writing by the Lessors and to the satisfaction of the Lessors.

10 Insurances

10.1 Public Liability Insurance

The Lessee covenants and agrees to effect and keep current at all times during the term of this Lease, with the Government Insurance Office of New South Wales or other insurance company approved by the Lessors, an insurance policy in respect of public liability insurance for the Lessor's risk as property owner and the Lessee's risks as occupier for an adequate cover, which shall not be less than twenty million dollars (\$20,000,000.00).

10.2 Insurance of the Demised Premises

The Lessee shall be responsible for effecting an insurance policy which shall provide for full replacement in the event of destruction of the Demised Premises.

10.3 Plate Glass Insurance

If there is plate glass on or forming part of the Demised Premises, the Lessee will, at its own cost, effect and at all times keep in full force and effect plate glass insurance for the full replacement value thereof.

THOMSON GEER

287 Miller Street
Page 8 of 15

Reference:

Legal/74188556_8

10.4 Evidence of Insurance

The Lessee shall deliver to the Lessors, upon demand, all cover notes and the policies of insurance required under this clause 10, including any certificates of renewal and receipts for the premiums payable thereunder.

10.5 Inclusion of Lessors

The policies referred to in clauses 10.1, 10.2 and 10.3 above shall note the Lessors as registered proprietors of the Demised Premises and as co-insured.

10.6 Lessee not to void insurances

The Lessee shall not, at any time during the term of this Lease and otherwise so long as the Lessee may remain in possession, do or permit any act, matter or thing upon the Demised Premises whereby any insurance in respect thereof (whether effected by Lessors or Lessee) may be vitiated or rendered void or voidable.

11 Indemnities and Releases

11.1 Indemnity and Release of Lessors

The Lessee agrees to occupy, use and keep the Demised Premises at the risk of the Lessee and hereby releases and indemnifies, to the fullest extent permitted by law, the Council in the absence of any negligent act or omission or wilful default on their part from and against all claims and demands of every kind resulting from any accident, damage or injury occurring therein AND the Lessee expressly agrees that in the absence of any negligent act or omission or wilful default as aforesaid the Council shall have no responsibility or liability for any injury to persons or property or loss or damage to fixtures and/or personal property of the Lessee.

12 Default by Lessee and Termination of Lease

12.1 Notice of Remedy Breach

Where the Lessee commits or permits any breach or default in the due and punctual observance and performance of the covenants, conditions or provisions of this Lease on the part of the Lessee to be observed and performed and where such default is one capable of being remedied by the Lessee (not being a fundamental, persistent, serious or restrictive breach) then the Lessors shall be entitled to serve upon the Lessee a Notice in writing specifying the nature of the default and the requirement for the Lessee to remedy the same within twenty one (21) days of the date of service thereof.

12.2 Determination on breach or other default

It is hereby expressly agreed and declared that the covenants by the Lessee contained or implied in:

- (a) Clause 2 to pay the annual Rent on demand;
- (b) Clause 4 relating inter alia to user, assignment and/or transfer of the Demised Premises;
- (c) Clause 6 relating inter alia to payment of outgoings;
- (d) Clause 7 relating to maintenance, repair and cleaning, and, in particular, clause 7.4 relating to undertaking to peaceably surrender and yield up to the Lessors the whole of the Demised Property in good and substantial repair;
- (e) Clause 8 relating to provision of access to the Lessors; and

Reference:

THOMSON GEER287 Miller Street
Page 9 of 15

Legal/74188556_8

- (f) Clause 10 relating to the maintenance by the Lessee of insurances;

are (subject to the proviso hereinafter contained) essential and/or fundamental terms of this Lease and the breach, non-observance or non-performance of any one or more of such covenants, terms and conditions shall be deemed to be a fundamental breach of the provisions of this Lease on the part of the Lessee to be observed and performed (PROVIDED THAT the presence of this clause in this Lease shall not mean or be construed as meaning that there are no other fundamental and/or essential terms in this Lease). Should the Lessors terminate this Lease following any such fundamental breach or otherwise, then, without prejudice to any other rights or remedies of the Lessors herein contained or implied IT IS EXPRESSLY AGREED AND DECLARED that the Lessors shall be entitled to recover from the Lessee as and by way of liquidated damages for such breach the difference between the aggregate of the annual rent, the Lessee's proportion of the statutory outgoings of the building, and other monies which would have been payable by the Lessee for the unexpired residue of the term but for such determination calculated from the date of such determination to the date of expiration of the term of this Lease, less the aggregate of the several rentals, outgoings and other monies which the Lessors by taking proper steps to re-let the Demised Premises shall obtain or could reasonably be expected to obtain by re-letting the Demised Premises for the unexpired residue of the term (if any) PROVIDED THAT in so doing the Lessors shall not be required or be obliged to offer or accept in respect of such re-letting terms, covenants, conditions or stipulations which are the same or similar to the terms covenants conditions or stipulations herein contained or implied.

12.3 Right of Lessors to remedy Lessee's default

On each and every occasion in which the Lessee omits or neglects to pay any money or to do or effect anything which the Lessee has herein covenanted to pay do or effect then it shall be lawful for but not obligatory upon the Lessors (and without prejudice to any rights and powers arising from such default) to pay such money or to do or effect such thing by itself, its architects, agents, contractors and workmen as if it were the Lessee and for that purpose the Lessors, its architects, contractors, workmen and agents may with fourteen (14) days prior notice to the Lessee enter upon the whole or any part of the Demised Premises and there remain for the purpose of doing or effecting any such thing and the Lessors may sue for and recover from the Lessee the amount, expenses and costs of such payment or of such doing or effecting forthwith as a liquidated debt in any court of competent jurisdiction or otherwise provided for in this Lease.

12.4 Termination of Lease not to affect Antecedent Breach

The termination of the Lease shall not prejudice or affect any rights or remedies of the Lessors against the Lessee, or of any guarantor or any person or company jointly liable with the Lessee on account of any conditions and/or provisions on the part of the Lessee to be observed and performed.

12.5 Waiver

No consent or waiver, express or implied, by the Lessors to or of any breach of any covenant, condition or provision of this Lease by the Lessee shall be deemed to operate as a consent or waiver to or of any other breach of the same or any other covenant, condition or provision.

12.6 Lessors to become Lessee's Attorney

By the execution of this Lease, the Lessee does irrevocably nominate, constitute and appoint the Lessors to be the true and lawful attorney of the Lessee to execute on behalf of and in the name of and as the act and deed of the Lessee a surrender of this Lease and, if necessary, a withdrawal of any caveat registered by the Lessee against the Demised Premises or the land of which the Demised Premises may form part as may be necessary to obtain registration thereof PROVIDED ALWAYS THAT such power shall not be exercised unless and until this Lease shall have been determined by the Lessors in accordance with the powers of the Lessors under this Lease expressed or implied, sufficient proof whereof to the satisfaction of the authority having control of the registration of the surrender of lease or withdrawal of caveat shall be a declaration of the attorney exercising the power, and any such act or deed such attorney shall lawfully do or purport

Reference:

THOMSON GEER

287 Miller Street
Page 10 of 15

Legal/74188556_8

to do or cause to be done by virtue of the said appointment is hereby ratified and confirmed by the Lessee.

12.7 Lessee's right to early Surrender

Notwithstanding the term of the Lease agreed between the parties hereto, the Lessee may surrender this Lease during the term by giving not less than six (6) months' previous notice in writing of such intention to the Lessors. In such event, the Lessee shall execute all documents and do all such things as required to effect a surrender of the Lease.

13 Determinations of Lessors

The Lessee agrees that any decisions and determinations to be made under this Lease on the part of the Lessors shall be made in accordance with the Deed of Agreement to prevent any conflict of interest arising as a result of the Lessee being in a capacity of both Lessor and Lessee.

14 Notices

14.1 Service by Lessors

All notices to be served by the Lessors upon the Lessee in respect of this Lease shall be sufficiently served if signed by the General Manager of the Council or their delegate and if:

- (a) served personally or sent by ordinary prepaid post addressed to the Lessee at the Lessee's address shown in Item 2 of this Lease, in which case it will be deemed to have been duly given or served at the time when it would, in the ordinary course, have been delivered.;
- (b) left at the Demised Premises; or
- (c) sent by email in which case it will be deemed to have been given at the I.

14.2 Service by Lessee

All notices to be given by the Lessee pursuant to this Lease shall be served personally or by ordinary prepaid post addressed to General Manager of the Council at the address of either shown in Item 1 of this Lease. Any notice served by post shall be deemed to have been duly given or served at the time when it would, in the ordinary course, have been delivered.

14.3 Effect of receipt

- (a) A Notice given in accordance with this clause 14 is treated as having been given and received:
 - (i) if personally delivered, on delivery;
 - (ii) if sent by pre-paid mail, on the fifth clear business day in Sydney after the date of posting (or the seventh business day in Sydney after the date of posting if sent to or from an address outside Australia);
 - (iii) if sent by email, at the time of transmission by the sender, unless the sender receives an automated notice generated by the sender's or the recipient's email server that the email was not delivered,

except that, if the delivery, receipt or transmission is after 5.00pm in the place of receipt or on a day which is not a business day in Sydney, it is taken to have been received at 9.00am on the next Business Day.

15 Holding Over

- 15.1 In the event of the Lessee, with the consent of all the Lessors, continuing in occupation of the Demised Premises after the expiration of the initial term of the Lease, the tenancy shall, under all the covenants and conditions of this Lease, continue as a monthly tenancy only at a monthly rental payable on demand being one twelfth (1/12th) of the amount of the annual rent payable hereunder. Such tenancy may be determined by one month's notice in writing from either party given to the other.

16 Interpretation

16.1 Lessors

A reference to "the Lessors" shall, where the context admits, extend to and include the Lessors, their successors in title and assigns, their servants, workmen, agents and contractors.

16.2 Lessee

The term "the Lessee" shall, where the context admits, extend to and include the Lessee and its successors and permitted assigns.

16.3 Persons

The word "person" shall include a corporation.

16.4 Plurals and Genders

Words importing the singular or plural number include the plural and singular numbers respectively and words of each gender shall include the other gender.

16.5 Lessees severally bound

Where two or more persons are Lessees, the covenants and obligations on their part herein contained shall bind them jointly and each of them severally.

16.6 Statutes and Regulations

Reference to Statutes, Regulations, Ordinances or By-Laws shall be deemed to extend to all Statutes, Regulations, Ordinances or By-Laws amending consolidating or replacing the same.

16.7 Demised Premises

The term "Demised Premises" or "premises", where the context admits, include all fixtures, fittings, furnishings, plant and equipment (if any) now or hereafter installed therein by the Lessors.

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

Executed as a deed

Lessor:

Executed by Link Wentworth Housing Limited ABN 62 003 084 928 in accordance with section 127 of the *Corporations Act 2001* (Cth):
16.8

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

Executed by North Sydney Council ABN 32 353 260 317 by its authorised delegate pursuant to section 377 of the *Local Government Act 1993*

Certified correct for the purposes of the Real Property Act 1900 by North Sydney Council by its authorised delegate pursuant to section 377 of the *Local Government Act 1993*

Signature of delegate: _____

Name of delegate: _____ Ken Gouldthorp
General Manager

I certify that I am an eligible witness and that the authorised delegate signed this dealing in my presence.

Lessee:

Executed by Link Wentworth Housing Limited ABN 62 003 084 928 in accordance with section 127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director
BLOCK LETTERS

Name of *Director/*Company Secretary
BLOCK LETTERS
*please strike out as appropriate

THOMSON GEER

287 Miller Street
Page 13 of 15

Reference:

Legal/74188556_8

Table of Contents

Reference Schedule..... 3

1 Definitions 4

Rent has the meaning given in Item 4..... 4

2 Grant and Rent..... 4

2.1 Grant 4

2.2 Rent 4

3 Exclusion of Statutory Provisions 4

3.1 Implied Covenants Negatived 4

3.2 Residential Tenancies Act 4

4 Permitted Use of Demised Premises 4

4.1 Permitted Use 4

4.2 Assignment and Transfer 4

4.3 Premises not to remain vacant 5

4.4 No noxious use of Premise..... 5

4.5 Subletting 5

5 Quiet Enjoyment 5

5.1 Quiet Enjoyment..... 5

6 Rates and other charges..... 6

6.1 Rates and Taxes 6

6.2 Charges for Services..... 6

6.3 Excess charges 6

7 Maintenance, Repair and Care of the Demised Premises 6

7.1 Repair of Demised Premises during Lease..... 6

7.2 Repair of wilful damage 6

7.3 Inspection Record 6

7.4 Repair on Termination of Lease 6

7.5 Cleaning 7

7.6 Lessee’s compliance with Regulations, Ordinances etc..... 7

7.7 General provisions 7

7.8 Lessors right to repair..... 7

7.9 Fences 7

8 Access 8

8.1 Lessors' Right of Access 8

9 Alterations and Additions 8

9.1 No alterations without consent..... 8

10 Insurances..... 8

10.1 Public Liability Insurance 8

10.2 Insurance of the Demised Premises 8

10.3 Plate Glass Insurance 8

10.4 Evidence of Insurance 9

10.5 Inclusion of Lessors..... 9

10.6 Lessee not to void insurances 9

11 Indemnities and Releases 9

Reference:

THOMSON GEER

287 Miller Street
Page 14 of 15

Legal/74188556_8

11.1 Indemnity and Release of Lessors 9

12 Default by Lessee and Termination of Lease..... 9

12.1 Notice of Remedy Breach..... 9

12.2 Determination on breach or other default 9

12.3 Right of Lessors to remedy Lessee's default 10

12.4 Termination of Lease not to affect Antecedent Breach 10

12.5 Waiver..... 10

12.6 Lessors to become Lessee's Attorney 10

12.7 Lessee's right to early Surrender 11

13 Determinations of Lessors 11

14 Notices..... 11

14.1 Service by Lessors 11

14.2 Service by Lessee 11

14.3 Effect of receipt 11

15 Holding Over 12

16 Interpretation 12

16.1 Lessors 12

16.2 Lessee 12

16.3 Persons 12

16.4 Plurals and Genders..... 12

16.5 Lessees severally bound 12

16.6 Statutes and Regulations 12

16.7 Demised Premises 12

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

Page 38

Annexure C
Draft Certifier Deed

Development Management Agreement

Reference: MG 4724933
Legal/74218891_11

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

THOMSON GEER

LAWYERS

Level 14, 60 Martin Place
Sydney NSW 2000 Australia

T +61 2 8248 5800 | F +61 2 8248 5899

Independent Certifier Deed - 287 Miller Street, Cammeray NSW 2062

between

**Link Wentworth Housing Limited ABN 62 003 084 928 and North Sydney
Council ABN 32 353 260 317 (Owner)**

and

Link Wentworth Housing Limited ABN 62 003 084 928 (Developer)

and

DJ Gabriel Consulting Pty Ltd ACN 139 332 317 (Certifier)

www.tg.law.com.au
Sydney Melbourne | Brisbane Perth Adelaide
ABN 21 442 367 363

ADVICE | TRANSACTIONS | DISPUTES
THOMSON GEER

Contents

Details	4
General terms	7
1 Defined terms and interpretation	7
1.1 Defined terms	7
1.2 Interpretation	8
2 Appointment	9
2.1 Appointment of Certifier	9
2.2 Acceptance of appointment	9
3 Assistance	9
4 Acknowledgment	9
5 Parties must not influence or direct	10
6 Fees and expenses	10
6.1 Fees	10
6.2 Claims	10
6.3 Payment	11
7 Goods and services tax	11
7.1 Interpretation	11
7.2 GST inclusive amounts	11
7.3 Consideration is GST exclusive	11
7.4 Gross up of consideration	11
7.5 Reimbursements (net down)	11
7.6 Tax invoices	12
8 Obligations, duties and functions of Certifier	12
9 Representations and warranties	12
10 Acknowledgment	12
11 Personnel	13
11.1 Professional and competent personnel to be provided	13
11.2 Developer and the Owner right to reject nominated personnel	13
11.3 No change to personnel	13
11.4 Right to require removal	13
12 Prevention and Conflict of Interest	14
12.1 Prevention	14
12.2 Conflict of Interest	14

13	Meetings	14
14	Inspections	14
14.1	Certifier must attend inspections	14
14.2	Access	14
14.3	Certifier's obligations in accessing Land	15
14.4	Copies of documents and other materials	15
15	Form of Certification	15
16	Certifications	15
16.1	Determinations	15
16.2	Disputing a determination or certification	16
16.3	Adjudication of Dispute	16
17	Records and Information	17
17.1	Certifier must keep records of services	17
17.2	Certifier must make documents available	17
17.3	Certifier must provide copy of communications	17
18	Termination	17
18.1	Right to terminate	17
18.2	Rights on termination	17
18.3	Appointment of successor	18
18.4	Return of Records	18
19	Indemnity	18
20	Insurance	18
20.1	Insurance	18
20.2	Periods for insurance	19
20.3	Policy	19
20.4	Evidence of insurance	19
20.5	No limitation	19
21	Notices	20
21.1	Method of giving notices	20
21.2	Time of receipt	20
21.3	Address for Notices	20
22	Assignment and subcontracting	20
22.1	No assignment by Certifier	20
22.2	Subcontracting	21
22.3	Developer and Owner may assign	21
23	Law and jurisdiction	21
23.1	Governing Law	21
23.2	Submission to jurisdiction	21
24	General	21
24.1	Continuing indemnities	21
24.2	Waiver	22

24.3	Rights cumulative	22
24.4	Entire agreement	22
24.5	Amendment	22
24.6	Severability	22
24.7	Further assurance	22
24.8	Counterparts	22
24.9	Attorneys	22
24.10	No partnership or agency	23
24.11	Costs and expenses	23
<hr/>		
25	Confidentiality	23
25.1	Meaning of confidential information	23
25.2	Confidentiality obligations	23
25.3	No publicity	24
25.4	Return of Confidential Information	24
25.5	Obligations additional	24
	Schedule 1 - Fees	25
	Signing page	26

Details

Parties	Developer, Owner and Certifier	
Developer	Name	Link Wentworth Housing Limited
	ACN	003 084 928
	Address	Level 10, 67 Albert Avenue, Chatswood NSW 2067
	Email	Sean.Carty@linkwentworth.org.au
	Attention	Sean Carty
Owner	Name	Link Wentworth Housing Limited
	ACN	003 084 928
	Address	Level 10, 67 Albert Avenue, Chatswood NSW 2067
	Email	Sean.Carty@linkwentworth.org.au
	Attention	Sean Carty
	Name	North Sydney Council
	ABN	32 353 260 317
	Address	200 Miller Street, North Sydney NSW 2060
	Email	Marcelo.Occhiuzzi@northsydney.nsw.gov.au
	Attention	Marcelo Occhiuzzi – Director of Community, Planning and Environment
Certifier	Name	DJ Gabriel Consulting Pty Ltd, trading as Signature Project Management
	ACN	139 332 317
	Address	Suite 302, 407 Pacific Highway Artarmon NSW 2064
	Email	deang@signaturepm.com.au
	Attention	Dean Gavrilovic

Recitals	A	The Developer has been appointed by the Owner under the Development Management Agreement to procure the completion of the Development.
	B	The Development Management Agreement requires the Developer and the Owner to jointly appoint an independent certifier for various purposes associated with the Development and the Works.
	D	Under this deed, the Developer and the Owner appoint the Certifier to carry out the IC's Obligations and the Certifier accepts the appointment on the terms and conditions contained in this deed.

DocuSign Envelope ID: FDEE1F82-FF4E-4172-9375-A8A9CE2259EA

6

Governing law New South Wales

Date of deed See Signing page

THOMSON GEER

Independent Certifier Deed

Reference:MDG
Legal/77635728_5

General terms

1 Defined terms and interpretation

1.1 Defined terms

In this deed, unless a contrary intention appears:

Adjudicator means the adjudicator appointed pursuant to clause 16.3 to make a determination or certification.

Business Days has the meaning as set out in the *Building and Construction Industry Security of Payment Act 1999* (NSW).

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

Date of Practical Completion has the meaning given in the Development Management Agreement.

Development means the development of the Land in accordance with the Development Management Agreement.

Development Management Agreement means the development management agreement between the Owner and the Developer concerning the Works and the Land dated [] 2023.

Fee means the amounts (inclusive of expenses) specified in **Schedule 1**.

IC's Obligations means the functions and duties of the Certifier under the Development Management Agreement.

Independent Certifier and **Certifier** means the independent certifier or certifier as provided for under the Development Management Agreement, also being the Certifier under this deed.

Insolvency Event means the happening of any of these events:

- (a) an order is made that a body corporate be wound up;
- (b) an order is made appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order;
- (c) a receiver or receiver and manager is appointed to the whole or substantially the whole of the assets of a body corporate;
- (d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;
- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate

while solvent on terms reasonably approved by the other parties, or is otherwise wound up or dissolved;

- (f) a body corporate takes any step to obtain protection, or is granted protection from its creditors, under any applicable legislation, or an administrator or voluntary administrator is appointed to a body corporate;
- (g) a body corporate is unable to pay its debts as they fall due; or
- (h) an application or order had been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 28 days) which is preparatory to, or could result in, any of the matters referred to in paragraphs (a), (b) or (c) above.

Land means the land known as Lot 5 in Deposited Plan 4206, known as 287 Miller Street, Cammeray NSW 2062.

Law includes any requirement of statute, rule, regulation, proclamation, ordinance, by-law or Australian Standard, present or future, and whether state, federal or otherwise.

Related Entity has the meaning given to that term in the Corporations Act.

Working Day means a day on which banks are open for general banking business, not being a Saturday, Sunday or public holiday in Sydney.

Works means the works described as the 'Landlord's Works' in the Development Management Agreement.

1.2 Interpretation

In this deed, unless a contrary intention appears:

- (a) a reference to this deed or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) person includes a firm, a body corporate, an unincorporated association or a responsible authority, as constituted from time to time;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes, assigns, employees, servants, agents, consultants, contractors, advisers, financiers, subcontractors, licensees and invitees;
- (f) words importing any gender include all other genders, as applicable;
- (g) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it, and a reference to a group of persons is a reference to any one or more of them;
- (h) a reference to a clause, Schedule or Appendix is to a clause, Schedule or Appendix in or to this deed;

- (i) a reference to a day other than a Business Day or a Working Day is reference to the period of time commencing at midnight and ending 24 hours later;
- (j) a reference to the payment of money within a specified time is, in the case of a payment by cheque, a reference to the full clearance of any personal cheque into the account of the payee within that time;
- (k) words and phrases derived from a defined word have a corresponding meaning to the defined word;
- (l) where any warranty is given under this deed the party giving that warranty indemnifies the party enjoying the benefit of that warranty in respect of any loss or damage or expense which arises out of or is in any way connected with a breach of that warranty;
- (m) "include" (in any form), when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or items of a similar kind; and
- (n) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally.

2 Appointment

2.1 Appointment of Certifier

- (a) The Developer and the Owner appoint the Certifier to carry out the IC's Obligations.
- (b) This appointment commences on the date of this deed and terminates on the earlier of:
 - (i) when the Certifier has fully performed or completed all of the IC's Obligations; and
 - (ii) the termination of this deed in accordance with clause 18.

2.2 Acceptance of appointment

The Certifier accepts its appointment under clause 2.1 and agrees to carry out the IC's Obligations in accordance with this deed.

3 Assistance

The Developer and the Owner respectively agree to promptly provide to the Certifier whatever assistance or information the Certifier may reasonably require in connection with the performance of the IC's Obligations.

4 Acknowledgment

The Certifier acknowledges and agrees that:

- (a) it has received a copy of the relevant terms and conditions of the Development Management Agreement necessary to enable the Certifier to perform the IC's Obligations;

- (b) it has read, and is familiar with, the relevant terms and conditions of the Development Management Agreement;
- (c) it is fully aware of and accepts the obligations imposed on the Certifier under this deed;
- (d) the Developer and the Owner are relying on the skill and expertise of the Certifier in the performance of the IC's Obligations, and may suffer loss if it does not perform its obligations in accordance with this deed;
- (e) it has no authority to give directions to the Developer and the Owner, other than to the extent set out in this deed or the Development Management Agreement;
- (f) the Developer and the Owner are entitled to, and will rely on, any certificate signed or given by the Certifier under or pursuant to the Development Management Agreement;
- (g) its decisions, when performing the role of the Independent Certifier under the Development Management Agreement and this deed, affect the respective interests of the Developer and the Owner;
- (h) the Developer and the Owner may make submissions to the Certifier in connection with the performance of the IC's Obligations.

5 Parties must not influence or direct

The Developer and the Owner must not seek to improperly influence or direct the Certifier in its performance of the IC's Obligations.

6 Fees and expenses

6.1 Fees

The Developer agrees to pay to the Certifier the Fee in accordance with **Schedule 1**, in consideration of the Certifier performing the IC's Obligations.

6.2 Claims

Within seven (7) Working Days after the end of each calendar month and within seven (7) Working Days after the expiration or termination of this deed, the Certifier shall submit to each of the Developer and the Owner a detailed Fee claim, in a form approved by the Developer, showing:

- (a) the total amount previously paid to the Certifier in respect of the Development Management Agreement;
- (b) the amount claimed by the Certifier for that month or period, itemised by reference to the Development Management Agreement; and
- (c) such other information as may be reasonably required by the Developer or the Owner.

This clause 6.2 survives the expiry or termination of this deed.

6.3 Payment

- (a) Within 10 Business Days after receipt of a valid claim under clause 6.2, the Developer must assess the Certifier's claim, and issue a payment schedule identifying the amount the Developer intends to pay to the Certifier for that month or period.
- (b) Within 15 Business Days after receipt of a valid claim under clause 6.2, the Developer shall pay the Certifier the amount properly payable in respect of the Certifier's claim.
- (c) This clause 6.3 survives the expiry or termination of this deed.

7 Goods and services tax**7.1 Interpretation**

Words or expressions used in this clause 7 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

7.2 GST inclusive amounts

For the purposes of this deed, where the expression **GST inclusive** is used in relation to an amount payable or other consideration to be provided for a supply under this deed, the amount or consideration will not be increased on account of any GST payable on that supply.

7.3 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this deed, unless specifically described in this deed as **GST inclusive**, does not include an amount on account of GST.

7.4 Gross up of consideration

Despite any other provision in this deed, if a party (**Supplier**) makes a supply under or in connection with this deed on which GST is imposed (not being a supply the consideration for which is specifically described in this deed as **GST inclusive**):

- (a) the consideration payable or to be provided for that supply under this deed but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier, an amount equal to the GST payable by the Supplier on that supply; and
- (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

7.5 Reimbursements (net down)

If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.

7.6 Tax invoices

The Supplier will provide a tax invoice.

8 Obligations, duties and functions of Certifier

- (a) The Certifier must perform the IC's Obligations and otherwise do all things contemplated to be done by the Certifier (or Independent Certifier) under the Development Management Agreement and the *Environmental Planning and Assessment Act 1979* (NSW) and *Environmental Planning and Assessment Regulation 2021* (NSW) and so as to ensure the satisfactory completion of the Development Works as defined in the Development Management Agreement and as prescribed by the *Environmental Planning and Assessment Act 1979* (NSW) and *Environmental Planning and Assessment Regulation 2021* (NSW).
- (b) If the Certifier becomes aware of any matter which may change or delay the performance of the IC's Obligations, it must immediately advise the Developer and the Owner in writing.

9 Representations and warranties

The Certifier represents and warrants to each of the Developer and the Owner that:

- (a) it will act independently of the Developer and the Owner, and their respective Related Entities;
- (b) the Certifier and all of its representatives and personnel engaged in the performance of the IC's Obligations will be and remain adequately and appropriately experienced and properly qualified to perform those obligations with a high degree of professional skill, care and diligence; and
- (c) in performing the IC's Obligations, the Certifier and all of its representatives and personnel will, at all times:
 - (i) act in accordance with the terms of this deed and of the Development Management Agreement;
 - (ii) perform the IC's Obligations with a high degree of professional skill, care and diligence expected of a properly qualified expert consultant experienced in performing services of a similar nature and complexity to the IC's Obligations;
 - (iii) act diligently, honestly, fairly, impartially and in good faith;
 - (iv) arrive at reasonable determinations; and
 - (v) act within the time prescribed under the Development Management Agreement or, if no time is prescribed, within a reasonable time.

10 Acknowledgment

The Certifier acknowledges that each of the Developer and the Owner has entered into this deed in reliance upon the representations and warranties set out in clause 9.

11 Personnel

11.1 Professional and competent personnel to be provided

- (a) The Certifier must, at all times, ensure that appropriately qualified, experienced and competent personnel are engaged by the Certifier to perform the IC's Obligations.
- (b) The Certifier shall, if requested at any time by the Developer or the Owner, promptly provide a list of the personnel which it proposes to use or is using to perform the IC's Obligations, detailing the qualifications and experience of each person.
- (c) Without limiting:
 - (i) the general nature of the obligation in clause 11.1(a); or
 - (ii) the rights of the Developer and the Owner under clauses 11.2 and 11.4,

the Certifier must (subject to clause 11.2(b)), ensure that, at all times, the following personnel are actively involved in discharging and performing the IC's Obligations:

- Dean Gavrilovic.

11.2 Developer and the Owner right to reject nominated personnel

The Developer and the Owner have the right (independently of each other), to:

- (a) within a reasonable time of the provision of a list under clause 11.1(b), reject any personnel nominated by the Certifier in that list; or
- (b) within a reasonable time of the date of this deed, direct the removal of either of the personnel nominated in clause 11.1(c).

11.3 No change to personnel

Subject to clauses 11.2 and 11.4, the Certifier will not change:

- (a) the personnel nominated by the Certifier under clause 11.1(b); or
- (b) the personnel named in clause 11.1(c),

without the prior written approval of each of the Developer and the Owner, which approval must not be unreasonably withheld.

11.4 Right to require removal

If, at any time during the term of this deed, either of the Developer or the Owner consider that the conduct of any of the Certifier's personnel is prejudicial to the Development, that person may, after a bona fide consultation with the Certifier and the other of them, by written notice to the Certifier, require the removal of the person from any further involvement in the Works. Following the removal of any person, the Certifier must, within 14 days, replace the person named in that notice with a person acceptable to the Developer and the Owner.

12 Prevention and Conflict of Interest

12.1 Prevention

The Certifier shall immediately, upon becoming aware of any fact or circumstance which may prevent the Certifier from complying with the IC's Obligations:

- (a) inform the Developer and the Owner of that fact or circumstance; and
- (b) make a recommendation to the Developer and the Owner as to the necessary action or work to be undertaken to rectify the situation.

12.2 Conflict of Interest

- (a) The Certifier warrants that:
 - (i) at the date of signing this deed, other than as disclosed to the Developer and the Owner in writing, no conflict of interest exists or is likely to arise in the performance of the IC's Obligations; and
 - (ii) if, during the term of this deed, any such conflict or risk of conflict of interest arises, the Certifier will notify the Developer and the Owner immediately in writing of that conflict or risk.
- (b) If any conflict or risk of conflict arises, the Certifier and the Developer and the Owner shall negotiate in good faith to agree on how the conflict or risk of conflict can be properly managed.
- (c) If, after 14 days following the commencement of negotiations referred to in clause 12.2(b), the Certifier and the Developer and the Owner are unable to agree on how the conflict or risk of conflict of interest can be properly managed, then, if the Developer and the Owner are unanimous, the Certifier must take such action as is reasonably required by the Developer and the Owner to remove the conflict or risk of conflict.

13 Meetings

The Certifier shall nominate a representative acceptable to the Developer and the Owner to attend meetings as required under or in respect of the Development Management Agreement.

14 Inspections

14.1 Certifier must attend inspections

The Certifier shall, upon reasonable notice, attend inspections necessary to determine matters required for the performance of the IC's Obligations, including, but not limited to, all or any inspections required under or prescribed by the *Environmental Planning and Assessment Act 1979* (NSW) and *Environmental Planning and Assessment Regulation 2021* (NSW).

14.2 Access

- (a) The Developer shall ensure that:

- (i) the Certifier, its employees, agents and consultants have access to the Land and any other place where Works are being carried out, as reasonably requested by the Certifier, to the extent required for the performance of the IC's Obligations; and
 - (ii) provision is made for the Certifier's employees to maintain offices on the Land (which may be as part of the site office) up to the Date of Practical Completion.
- (b) The Developer is not required to provide access to the Certifier, its employees, agents and consultants under this clause 14.2 to the extent that they do not comply with the reasonable site safety and security requirements of the Developer or its Related Entity (as applicable), or any principal contractor appointed under the *Work Health & Safety Regulation 2017* (NSW) in respect of the Works.

14.3 Certifier's obligations in accessing Land

- (a) The Certifier must not interfere with, delay or hinder the performance of activities by the Developer or the Developer's contractors, consultants and suppliers in respect of the Works, except to the extent the interference, delay or hindrance is an unavoidable consequence of performing the IC's Obligations.
- (b) The Certifier must, when accessing the Land and any other place where Works are being carried out, comply with the reasonable site safety and security requirements notified to it, including by any principal contractor appointed under the *Work Health & Safety Regulation 2017* (NSW) in respect of the Works.
- (c) Despite the provisions of this clause 14.3, the Certifier remains fully responsible for the timely performance of all the IC's Obligations.

14.4 Copies of documents and other materials

- (a) The Developer and the Owner must give the Certifier information and records in the possession or control of the party or the party's Related Entities which relate to the performance of the party's obligations under this deed, as reasonably requested by the Certifier for the purposes of performing the IC's Obligations.
- (b) The Developer must ensure that the Certifier has access at all times to the quality assurance programme and records established and maintained by the Developer or the Developer's builder for the Works.

15 Form of Certification

Any certification given by the Certifier pursuant to the Development Management Agreement must be in a form acceptable to the Developer and the Owner.

16 Certifications

16.1 Determinations

Subject to clause 16.2, determinations and certifications by the Certifier under the Development Management Agreement and this deed are made as an expert and are final and binding except in the case of manifest error.

16.2 Disputing a determination or certification

- (a) If the Developer or the Owner ("**Disputing Party**") wishes to dispute a determination or certification made by the Certifier under the Development Management Agreement, then, not later than 3 Working Days after the Disputing Party received notice of the Certifier's determination or certification, the Disputing Party must give a Dispute Notice to the Certifier and the other party setting out the objections that the Disputing Party has in relation to the determination or certification made by the Certifier. The giving of a Dispute Notice by a Disputing Party does not operate as a bar to the other party giving a Dispute Notice in relation to the determination or certification of the Certifier.
- (b) If a Dispute Notice is given under clause 16.2(a), and the Developer and the Owner do not agree in writing the matters in dispute within 5 Working Days of that Dispute Notice, an Adjudicator acting under clause 16.3 is to make the determination or certification the subject of the Dispute Notice.

16.3 Adjudication of Dispute

- (a) The Adjudicator is to be appointed by the Owner on behalf of the Developer and the Owner jointly. The Adjudicator must be agreed upon by the Owner and the Developer and, failing agreement within 5 Business Days of the Dispute Notice, will be appointed at the request of the Owner by the President (or other senior officer) of the New South Wales Division of the Australian Property Institute (or its successor body), or his nominee.
- (b) If the Adjudicator is unavailable, refuses to act, dies before making a determination or certification or is unable to act, the Owner must request the President (or other senior officer) for the time being of the New South Wales Division of the Australian Property Institute (or its successor body) or his or her nominee to appoint another Adjudicator to make the determination or certification.
- (c) The Adjudicator must be instructed by the Owner to:
 - (i) make the determination or certification the subject of the Dispute Notice;
 - (ii) give each of the Developer, the Owner and the Certifier a reasonable opportunity to make submissions; and
 - (iii) promptly fix a reasonable time and place for receiving submissions as he or she may think fit.
- (d) The Adjudicator has the power to engage and consult with any advisers, legal or technical, as he or she may see fit to assist in making his or her determination or certification.
- (e) The Adjudicator acts as an expert and not as an arbitrator and, accordingly, the law relating to arbitration will not apply to the Adjudicator's determination or certification or the procedures by which the Adjudicator may reach its determination or certification. The Adjudicator's determination or certification is conclusive and will bind the Developer and the Owner except in the case of manifest error.
- (f) The parties must pay the Adjudicator's costs (including the costs of engaging and consulting advisers) in the proportions decided by the

Adjudicator. If the Adjudicator gives no decision as to the payment of costs, the Developer and the Owner must pay those costs equally.

17 Records and Information

17.1 Certifier must keep records of services

The Certifier must keep records of all of the services performed by it under this deed and the Development Management Agreement and make those records available for inspection by the Developer and the Owner upon request.

17.2 Certifier must make documents available

If requested to do so, the Certifier must make available to any representatives or personnel of the Developer and the Owner all documents and information in its possession which are relevant to this deed and the Development Management Agreement that may assist them in the resolution of disputes which arise under the Development Management Agreement.

17.3 Certifier must provide copy of communications

The Certifier must ensure each of the Developer and the Owner receive a copy of all communications and documents made or issued by the Certifier in relation to the Development Management Agreement under this deed.

18 Termination

18.1 Right to terminate

- (a) Subject to clause 18.1(b), if at any time during the term of this deed the Certifier defaults in the performance of any of the IC's Obligations, and such default is not remedied to the satisfaction of each of the Developer and the Owner within seven (7) Working Days of notice of that default being given by either the Developer or the Owner to the Certifier, the Developer and the Owner may terminate the appointment of the Certifier by giving not less than ten (10) Working Days' notice in writing to the Certifier.
- (b) Subject to obtaining the prior written agreement of the other, the Developer and the Owner may terminate the appointment of the Certifier at any time by giving not less than ten (10) Working Days' notice in writing to the Certifier.
- (c) The Developer and the Owner may, without giving advance notice, terminate this deed by notice in writing to the Certifier if:
 - (i) an Insolvency Event occurs in relation to the Certifier, whether or not there has been a breach of this deed by the Certifier; or
 - (ii) the Development Management Agreement is terminated.

18.2 Rights on termination

- (a) Except where this deed is terminated as a result of a breach by the Certifier, or an Insolvency Event occurs in relation to the Certifier, on termination of the Certifier's appointment under this deed, the Certifier shall be entitled to payment of all amounts due to it under this deed up to and including the date of termination.

- (b) The termination of this deed will not affect any rights or liabilities of the parties which may have accrued prior to the termination.

18.3 Appointment of successor

- (a) Promptly after this deed is terminated (otherwise than under clause 18.1(c)(ii)), the Developer and the Owner must appoint a successor to the Certifier.
- (b) The successor certifier must:
 - (i) be acceptable to the Developer and the Owner (acting reasonably);
 - (ii) enter into a deed on the substantially similar terms as this deed; and
 - (iii) be adequately and appropriately experienced and properly qualified to perform the IC's Obligations with a high degree of professional skill, care and diligence and in accordance with the terms of this deed.
- (c) The Developer and the Owner agree to enter into the deed contemplated by clause 18.3(b)(ii) with the successor certifier.
- (d) This clause 18.3 survives the termination of this deed.

18.4 Return of Records

Within three (3) Working Days of the termination of its appointment, the out-going Certifier must:

- (a) deliver to the Developer or, at the direction of the Developer, to the successor certifier, all books, records, plans, specifications and other documents relating to the IC's Obligations in the possession or control of the out-going Certifier; and
- (b) use its reasonable endeavours to ensure the Certifier's representatives, agents and sub-contractors deliver such material to the Developer or, at the direction of the Developer, to the successor certifier.

19 Indemnity

The Certifier shall indemnify and keep indemnified each of the Developer and the Owner against all claims, actions, demands, proceedings, liabilities, damage, amounts, costs and expenses (including legal costs and disbursements on a solicitor and client basis) whatsoever and howsoever arising paid, suffered or incurred by either of the Developer and the Owner as a result of or in connection with (whether directly or indirectly) any negligent act or omission of the Certifier or any of its representatives, agents or sub-contractors or any breach or non-performance of the IC's Obligations or its obligations under this deed.

20 Insurance

20.1 Insurance

From the date of this deed, the Certifier must effect and maintain:

- (a) professional indemnity insurance with a limit of indemnity not less than \$20 million, which indemnifies each of the Developer and the Owner for a breach of professional duty, whether owed in contract or otherwise, by reason of any act, error or omission by the Certifier or its representatives, employees, agents or consultants which forms part of or results from the discharge of professional responsibilities assumed by the Certifier under this deed;
- (b) workers' compensation insurance in accordance with the requirements of Law;
- (c) public liability insurance with a limit of indemnity of not less than \$20 million; and
- (d) such other insurance as may reasonably be required by the Developer and the Owner (provided that the Developer and the Owner reimburse the Certifier for the reasonable costs of procuring such other insurance in equal proportions).

20.2 Periods for insurance

The insurance referred to in clause 20.1 must:

- (a) be in force at the date of this deed; and
- (b) be, in the case of:
 - (i) the professional indemnity insurance, maintained effective until ten (10) years after the Date of Practical Completion;
 - (ii) the workers' compensation insurance, current until the Certifier ceases to perform the IC's Obligations;
 - (iii) the public liability insurance, current until the Certifier ceases to perform the IC's Obligations; and
 - (iv) any other insurance, current for such time as may reasonably be required by the Developer and the Owner; and
- (c) in the case of the public liability insurance, name each of the Developer and the Owner for their respective interests.

20.3 Policy

The insurance referred to in clause 20.1 must be effected and maintained with an insurer and on terms approved by the Developer and the Owner, which approval shall not be unreasonably withheld.

20.4 Evidence of insurance

The Independent Certifier shall, at the request of either of the Developer or the Owner, provide to the Developer and the Owner evidence of currency of the insurance it is required to maintain under clause 20.1.

20.5 No limitation

The effecting of insurance under this clause 20 shall not in any way limit the obligations and liabilities of the Certifier under the provisions of this deed.

21 Notices

21.1 Method of giving notices

A notice, consent, approval or other communication (each a **Notice**) under this deed must be in writing, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given and:

- (a) personally delivered;
- (b) sent by pre-paid mail;
- (c) sent by email; or
- (d) sent by facsimile,

to that person's address.

21.2 Time of receipt

A Notice given to a person in accordance with clause 21.1 is treated as having been given and received:

- (a) if personally delivered, on the day of delivery if delivered before 4.00 p.m. on a Working Day, and otherwise on the next Working Day;
- (b) if sent by pre-paid mail, on the day of actual delivery if delivered before 4.00 p.m. on a Working Day, and otherwise on the next Working Day;
- (c) if sent by email, at the time that the recipient's email server records that the email was successfully transmitted, unless the transmission is not received on a Working Day or is received after 4.00 p.m. on a Working Day, in which case the notice is deemed to be given on the next at 9.00 a.m. on the next Working Day; and
- (d) if sent by facsimile and the transmission report states that it was sent in full and without error, on the day of transmission if that report states that the transmission was completed before 4.00 p.m. on a Working Day, and otherwise on the next Working Day.

21.3 Address for Notices

For the purposes of this clause, a party (the **sender**) may take the address of another party (the **recipient**) to be:

- (a) the address set out in this deed; or
- (b) the last address or number notified by the recipient to the sender.

22 Assignment and subcontracting

22.1 No assignment by Certifier

The Certifier may not assign, transfer, sub-contract or otherwise dispose of or deal with all or any part of its right, title or interest under this deed without first obtaining the written consent of each of the Developer and the Owner (which may be given or withheld at the discretion of each party). For the purposes of this clause, 'assign' includes a change in effective control of the Certifier.

22.2 Subcontracting

- (a) Despite clause 22.1, the Certifier may sub-contract:
- (i) the functions of a specialist quantity surveyor; and
 - (ii) any other part of the IC's Obligations which is outside the areas of business ordinarily performed by the Certifier,
- with the approval of the Developer and the Owner (which must not be unreasonably withheld or delayed).
- (b) With a request for approval under clause 22.2(a)(ii), the Certifier must give to the Developer and the Owner written particulars of the part of the IC's Obligations to be sub-contracted, the name and address of the sub-contractor and the amount payable to the sub-contractor.
- (c) In the event that the Certifier sub-contracts any of the IC's Obligations to a third party, the Certifier remains responsible for the acts and omissions of that third party as if they were the acts and omissions of the Certifier.
- (d) All sub-contractors engaged in the performance of the IC's Obligations must:
- (i) be competent and professional; and
 - (ii) have the qualifications and experience necessary to ensure full and proper performance of the duties allocated to them in accordance with this deed.

22.3 Developer and Owner may assign

Either or both the Developer and the Owner may, with the consent of the other, assign all or any part of their right, title or interest under this deed without the consent of the Certifier. The assigns to the Owner the Developer's rights under this deed to the extent those rights relate to the Development Management Agreement, if the Development Management Agreement is terminated.

23 Law and jurisdiction**23.1 Governing Law**

This deed is governed by the Law in force in New South Wales.

23.2 Submission to jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this deed.

24 General**24.1 Continuing indemnities**

Each indemnity given in this deed is a continuing obligation, separate and independent from any other obligation and survives termination of this deed.

24.2 Waiver

The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

24.3 Rights cumulative

The rights and remedies provided in this deed are cumulative and do not exclude any rights or remedies provided by Law.

24.4 Entire agreement

This deed, together with the Development Management Agreement, forms the entire agreement of the parties on the subject matter. The only enforceable obligations and liabilities of the parties in relation to the subject matter are those that arise out of the provisions contained in the Development Management Agreement and this deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by the Development Management Agreement and this deed.

24.5 Amendment

This deed may only be amended or supplemented in writing signed by the parties.

24.6 Severability

Any provision in this deed which is invalid or unenforceable in any jurisdiction must:

- (a) be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable; and
- (b) otherwise, if it is capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction, be so severed.

24.7 Further assurance

Each party must do, sign, execute and deliver, and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts reasonably required of it or them by notice from another party to carry out and give full effect to this deed and the rights and obligations of the parties under it.

24.8 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

24.9 Attorneys

Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under which the attorney executes this deed.

24.10 No partnership or agency

Except as expressly provided in this deed, nothing contained or implied in this deed will constitute or be deemed to constitute a party to be, the partner, joint-venturer, agent or legal representative of any other party for any purpose whatsoever, or create or be deemed to create any partnership, joint venture or agency between the parties.

24.11 Costs and expenses

Each party to this deed shall bear its own costs and expenses of negotiating, executing and stamping this deed.

25 Confidentiality
25.1 Meaning of confidential information

Confidential Information of a party (**Disclosing Party**) means:

- (a) the terms of this deed (including any written or oral agreements, negotiations or information in relation to this deed);
- (b) any documents which are or information which is confidential under this deed; and
- (c) the Development Management Agreement.

25.2 Confidentiality obligations

Each party (**Recipient**):

- (a) may use Confidential Information of a Disclosing Party only for the purposes of this deed; and
- (b) must keep confidential all Confidential Information of each Disclosing Party except to the extent (if any) that disclosure by the Recipient is:
 - (i) to legal and other professional advisers, auditors and other consultants (**Consultants**) and employees of that Recipient or that Recipient's Related Bodies Corporate, requiring the information for the purposes of this deed or the Development Management Agreement or any transaction contemplated by them, or for the purposes of advising that Recipient in relation thereto; or
 - (ii) of information which, is at the time, lawfully in the possession of the proposed recipient of the information through sources other than the Recipient; or
 - (iii) required by Law or by a lawful requirement of any government or governmental body, authority or agency having jurisdiction over a Recipient or its Related Bodies Corporate; or
 - (iv) required by a lawful requirement of any stock exchange having jurisdiction over a Recipient or its related bodies corporate; or
 - (v) necessary in connection with any prospectus or information memorandum for an issue or disposal or quotation on any stock exchange of shares in the Developer; or

- (vi) required in connection with legal proceedings, arbitration or expert determination relating to this deed or the Development Management Agreement, or for the purpose of advising a Recipient in relation thereto; or
- (vii) of information which is, at the time, generally and publicly available other than as a result of breach of confidence by the Recipient wishing to disclose the information; or
- (viii) necessary or commercially desirable to an existing or bona fide proposed or prospective operator, financier or rating agency,

however, the Recipient wishing to disclose information must, if requested by another party, procure that the proposed recipient of the information executes a confidentiality deed in favour of the parties prior to the disclosure of the confidential information.

25.3 No publicity

The Certifier must not advertise, publish or release any information to the media or public concerning this deed, the IC's Obligations or the Land or the Works, without the prior written consent of the Developer and the Owner.

25.4 Return of Confidential Information

Upon termination of this deed or completion of the IC's Obligations, the Certifier must deliver to each of the Developer and the Owner any Confidential Information of that party in the Certifier's possession which is capable of being delivered. The Certifier must delete, erase, or otherwise destroy any Confidential Information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the relevant party.

25.5 Obligations additional

The provisions of this clause 25 are in addition to (and not in substitution for) all other confidentiality obligations between the parties.

EXECUTED as a deed

Schedule 1 - Fees

Agreement	Fee	Proportions
Development Management Agreement	\$20,000	

Signing page

DATED: _____

Owner:

**EXECUTED as a deed by Link
Wentworth Housing Limited ABN 62
003 084 928** in accordance with section
127(1) of the *Corporations Act 2001*
(Cth):

.....
Signature of director

.....
Name of director (block letters)

.....
Signature of director/company
secretary*
*delete whichever is not applicable

.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

**EXECUTED as a deed by North
Sydney Council ABN 32 353 260 317**
pursuant to S.377 of the *Local
Government Act 1993* (NSW)
and I hereby state that I have no notice
of revocation of such delegation:

.....
Signature of witness

.....
Name of witness (block letters)

.....
Signature of delegate

.....
Name of delegate (block letters)

