

Planning Agreement

Under s 7.4 of the Environmental Planning and Assessment Act 1979 (NSW) (the Act)

**13A Church Avenue, Mascot NSW 2020
Lot 1 in Deposited Plan 547700**

Development Application DA-2024/10

Date of Execution:

Bayside Council
ABN 80 690 785 443

Sydney Eastern City Planning Panel

Iglu No. 216 Pty Ltd (ACN 672 097 862) in its capacity as trustee of Iglu Property Trust No. 216

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This Planning Agreement is dated

Parties

Bayside Council (**Council**)
ABN 80 690 785 443

Sydney Eastern City Planning Panel (**Panel**)

Iglu No. 216 Pty Ltd (ACN 672 097 862) in its capacity as trustee of Iglu Property Trust No. 216
(**Owner/Developer**)

Introduction

- A** The Owner/Developer owns the Land identified in Schedule 2, known as 13A Church Avenue, Mascot, and lodged Development Application DA-2024/10 seeking development consent under the Act for the Development on the Land.
- B** In connection with the Development Application DA-2024/10 the Owner/Developer has offered to enter into this Agreement in accordance with section 7.4 of the Act to provide the Development Contribution on the terms and conditions of this Agreement.
- C** The Owner/Developer is prepared to make the Development Contribution in connection with carrying out of the Development in accordance with this Agreement.
- D** The Panel is the consent authority in relation to the Development Application DA-2024/10.
- E** The Panel is required to be a party to the agreement in accordance with section 7.4(3A) of the Act because this Agreement excludes the application of sections 7.11 and 7.12 of the Act in respect of the Development.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

Capitalised terms in this Agreement have the meaning given to them in **Schedule 5**.

1.2 Interpretation

The provisions at **Schedule 6** apply in interpreting this Agreement.

2. Operation and application of this Agreement

2.1 Operation

(a) This Agreement takes effect and operates from the date when Parties have:

- (i) all executed the same copy of this Agreement; or
 - (ii) executed separate counterparts of this Deed and exchanged the counterparts in accordance with clause 13.14 of this Agreement.
- (b) This Agreement will remain in force until the obligations of the Parties under this Agreement are completed, this Agreement is terminated by operation of law or this Agreement is terminated pursuant to clause 11 of this Agreement.

2.2 Planning agreement under the Act

- (a) This Agreement constitutes a planning agreement within the meaning of section 7.4 of the Act and facilitates the provision of Development Contributions for the public benefit.
- (b) The Parties agree that this Agreement is a Planning Agreement within the meaning of section 7.4 of the Act and is governed by Part 7, Division 7.1, Subdivision 2 of the Act.
- (c) The parties agree on the matters set out in **Schedule 1**.

2.3 Further agreements relating to this Agreement

The Parties may, at any time and from time to time, enter into agreements in writing relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

2.4 Application

This Agreement applies to:

- (a) the Land; and
- (b) the Development.

2.5 Application of sections 7.11, 7.12 and Division 7.1, Subdivision 4 of the Act

As set out in **Schedule 1**, this Agreement:

- (a) excludes the application of sections 7.11 and 7.12 in respect of the Development; and
- (b) does not exclude the application of Division 7.1, Subdivision 4 of the Act.

3. Development Contributions

3.1 Requirement to provide Development Contribution

- (a) **Schedule 3** has effect in relation to the Development Contribution to be made by the Owner/Developer under this Agreement.
- (b) The Owner/Developer agrees to provide the Development Contribution in the manner and at the times set out in **Schedule 3** in relation to the Development Application DA-2024/10 for the Development.
- (c) If the Development Contribution is not paid in accordance with the 'Timing for completion' nominated in Schedule 3 - Item 2, the unpaid amount will accrue interest at a rate of 4% above the daily Reserve Bank of Australia Cash Rate from the date that payment was due up to and including the date when the overdue amount is paid.

- (d) If the Development Contribution has not been paid to Council in accordance with the times set out in Schedule 3 of this Agreement, in breach of this Agreement, no Construction Certificate can be issued in relation to any Development Consent granted to Development Application DA-2024/10.

3.2 Use of Contributions

The Owner/Developer agrees that the Council:

- (a) may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified; and
- (b) has no obligation to repay a Development Contribution.

4. Enforcement

4.1 Registration of Agreement

- (a) The Owner/Developer agrees to register this Agreement on title to the Land in accordance with this clause 4.
- (b) Subject to clause 4.1(c), the Owner/Developer must lodge this Agreement for registration on the Register pertaining to the Land no later than 28 days after the commencement of this Agreement, including obtaining the consent of any mortgagee or other person who has an interest in the Land.
- (c) The Owner/Developer does not need to register this Agreement in accordance with this clause if the Owner/Developer has made the Monetary Contribution before the end of the 28 day period referred to in clause 4.1(b).
- (d) For the avoidance of doubt, following execution of this Agreement the Owner/Developer will not take any action to grant an interest in the Land to another person so as to prevent registration of this Agreement on the Land as required by this Agreement.

4.2 Release and discharge of Agreement

Once the Monetary Contribution is made in accordance with this Agreement, the Council agrees to do all things reasonably required to release and discharge this Agreement with respect to that part of the Land.

5. Covenant not to sue

- (a) The Parties will not bring or pursue, or cause or procure a third party to bring or pursue, a Claim against each other in relation to the subject matter of this Agreement, other than a claim for a breach of this Agreement.
- (b) For the avoidance of doubt, the Owner/Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court of NSW involving an appeal against, or questioning the validity of:
 - (i) conditions of any Development Consent granted to Development Application DA-2024/10 relating to the payment of development contributions pursuant to this Agreement; or
 - (ii) this Agreement.

6. Enforcement in a court of competent jurisdiction

- (a) Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction within New South Wales.
- (b) This Agreement is governed by the law of New South Wales.
- (c) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Agreement.
- (d) For the avoidance of doubt, nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in any court of competent jurisdiction within New South Wales to enforce any aspect of this Agreement; and
 - (ii) Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement.

7. Dispute resolution

7.1 Notice of Dispute

- (a) If a Party claims that a dispute has arisen under this agreement (**Claimant**), it must give written notice to the other Party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).
- (b) This paragraph does not apply to an application for urgent interlocutory relief.

7.2 Response to Notice

Within 20 business days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

7.3 Negotiation

The representatives nominated under clause 7.2 must:

- (a) meet to discuss the matter the subject of the Claim Notice in good faith within 10 Business Days after service by the Respondent of notice of its representative; and
- (b) use reasonable endeavours to settle or resolve the dispute within 15 business days after they have met.

7.4 Further Notice if not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Dispute Notice**).

7.5 Mediation

The parties agree that a dispute shall be mediated if it is the subject of a Dispute Notice, in which case:

- (a) the parties must agree the terms of reference of the mediation within 5 Business Days of the receipt of the Dispute Notice (the terms shall include a requirement that the mediation rules of the Resolution Institute apply);
- (b) the appointment of a Mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Resolution Institute to appoint a mediator;
- (c) the Mediator appointed pursuant to this clause must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with the Mediator's function as mediator, being required to fully disclose any such interest or duty before the Mediator's appointment;
- (d) the Mediator shall be required to undertake to keep confidential all matters coming to the Mediator's knowledge by reason of the Mediator's appointment and performance of the Mediator's duties;
- (e) the parties must within 5 Business Days of receipt of the Dispute Notice notify each other of their representatives who will be involved in the mediation;
- (f) the parties agree to be bound by any mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement;
- (g) in relation to costs and expenses:
 - (i) each party will bear their own professional and expert costs incurred in connection with the mediation;
 - (ii) the costs of the Mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the Mediator may require the full costs of the mediation to be borne by that party.

7.6 Litigation

If the dispute is not finally resolved in accordance with clause 7.5, either party is at liberty to litigate the dispute.

7.7 Exchange of information

The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process established by this clause 7 for any purpose other than an attempt to settle a dispute between the parties.

7.8 Continue to Perform obligations

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

7.9 Survival of this clause

For the avoidance of doubt this clause survives the completion or termination of this Agreement.

8. Assignment and Transfer

Between the Commencement Date and the date on which the Monetary Contribution is made, the Owner/Developer cannot assign its rights or benefits or novate its obligations under this Agreement to another party, or transfer the Land or any part of it to another party (**Incoming Party**) unless:

- (a) the Council is satisfied that the Incoming Party has sufficient assets, resources and expertise required to perform the Owner/Developer's obligations under this Agreement; and
- (b) the Owner/Developer:
 - (i) has procured, at no cost to Council, the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council under which the Incoming Party agrees to comply with the terms and conditions of this Agreement as though the Incoming Party were the Owner/Developer; and
 - (ii) has obtained the Council's written notice that the Council:
 - (A) is satisfied that the requirements in clauses 8(a) to 8(b)(i) have been met; and
 - (B) consents to the proposed assignment, novation, or transfer;
 - (iii) the Owner/Developer is not in breach of this Agreement.

9. Capacity and relationship

9.1 General warranties

Each party warrants to each other party that this Agreement creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms.

9.2 Power of attorney

If an attorney executes this Agreement on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

9.3 Trustee Developer

- (a) Iglu No. 216 Pty Ltd (ACN 672 097 862) (**Trustee**) enters into this Agreement only in its capacity as the trustee for the Iglu Property Trust No. 216 (**Trust**) constituted by a trust agreement (**Trust Agreement**).
- (b) The Trustee warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it as Trustee;
 - (ii) it has the power under the Trust Agreement to execute and perform its obligations and discharge its liabilities under this Agreement and all necessary action has been taken to authorise the execution and performance of this Agreement under the Trust Agreement;
 - (iii) entry into this Agreement is for the benefit of the beneficiaries of the Trust and as Trustee it is authorised and empowered under the Trust Agreement to enter into and to perform its obligations and satisfy or discharge its liabilities under this Agreement;
 - (iv) it is not in breach of the Trust Agreement;
 - (v) it is entitled under the Trust Agreement to be indemnified in full in respect of the obligations and liabilities incurred by it under this Agreement; and
 - (vi) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this Agreement.
- (c) Liability arising under or in connection with this Agreement is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (d) No party to this Agreement or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this Agreement or otherwise against the Trustee in any capacity other than as Trustee of the Trust.

9.4 Assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this Agreement.

9.5 Relationship of parties

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

10. GST

- (a) In this clause:
 - (i) **Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, supply and Tax Invoice** have the meaning given by the GST Law.
 - (ii) **GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.
 - (iii) **GST Law** has the meaning given by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
 - (iv) **Input Tax Credit** has the meaning given by GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under GST Law.
 - (v) **Taxable Supply** has the meaning given by GST Law excluding (except where expressly agreed otherwise) a Supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount on GST on that Supply.
- (b) Subject to clause 10(d), if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- (c) Clause 10(b) does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- (d) No additional amount shall be payable by Council under clause 10(b) unless, and only to the extent that, Council (acting reasonably and in accordance with GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- (e) If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:

- (i) To negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- (ii) That any amounts payable by each Party in accordance with clause 10(b) (as limited by clause 10(d)) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- (f) No payment of any amount pursuant to this clause 10, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note, as the case may be, to the recipient.
- (g) Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- (h) This clause continues to apply after expiration or termination of this Agreement.

11. Termination

11.1 Termination

This Agreement terminates if the parties agree in writing to terminate the Agreement.

11.2 Consequences of termination

If this Agreement terminates:

- (a) all future rights and obligations of the parties under this document are discharged; and
- (b) all rights and obligations of the parties existing at the time of termination continue.

11.3 Determination

This Agreement determines if the Owner/Developer has satisfied all of the obligations imposed on it under this Agreement.

12. Costs

- (a) The Parties agree that the Owner/ Developer is to pay Council's reasonable legal costs of preparing, negotiating and executing this Agreement.
- (b) The Owner/Developer is required to pay Council's reasonable legal costs and disbursements of enforcing this Agreement except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

13. General provisions

13.1 Entire Agreement

- (a) This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- (b) This Agreement constitutes the entire Agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Notices and time for doing acts

- (a) Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.
- (b) The provisions relating to the time for doing acts at Schedule 4 - Item 2 apply.
- (c) The notice provisions at Schedule 4 - Item 3 apply.

13.3 Joint and individual liability and benefits

Except as otherwise set out in this Agreement:

- (a) any agreement, covenant, representation or warranty under this Agreement by 2 or more persons brings them jointly and each of them individually; and
- (b) any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

13.4 Representations and warranties

Each Party represents and warrants to each other Party that they have the power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

13.5 Severability

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

13.6 Variation

This Agreement must not be varied except by a later written document executed by all parties.

13.7 Waiver

A right created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party. It is not to be taken as an implied waiver of any

other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

13.8 Rights cumulative

Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

13.9 Duty

The Owner/Developer is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

13.10 Effect of Schedules

Each Party agrees to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

13.11 Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

13.12 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

13.13 No fetter

Nothing in this Agreement will be construed as requiring the Council to do anything that would cause it to be in breach of any of its obligations at law and, without limitation, nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

13.14 Counterparts

- (a) This Agreement may be executed in any number of counterparts or copies, each of which may be executed by physical signature in wet ink or electronically (whether in whole or part).
- (b) A party who has executed a counterpart of this Agreement may exchange it with and deliver it to another party (the Recipient) by:
 - (i) emailing a copy of the executed counterpart to the Recipient; or
 - (ii) utilising an electronic platform (including DocuSign) to circulate the executed counterpart, and will be taken to have adequately identified themselves by so emailing the copy to the Recipient or utilising the electronic platform.
- (c) Each party consents to signatories and parties executing this Agreement by electronic means and to identifying themselves in the manner specified in this clause.
- (d) Each counterpart constitutes an original (whether kept in electronic or paper form), all of which together constitute one instrument as if the signatures (or other execution markings) on the counterparts or copies were on a single physical copy of this deed in paper form.

Without limiting the foregoing, if any of the signatures or other markings on behalf of one party are on different counterparts or copies of this deed, this shall be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this deed.

13.15 Explanatory Note relating to this Agreement

- (a) The Appendix contains the Explanatory Note relating to this Agreement required by section 205 of the *Environmental Planning and Assessment Regulation 2021* (NSW) (**Regulation**).
- (b) Pursuant to section 205(5) of the Regulation, each Party agrees that the Explanatory Note in Appendix is not to be used to assist in construing this Agreement.

Schedule 1 – Requirements under section 7.4 of the Act

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

Requirement under the Act	This Agreement
Planning instrument and/or development application – (section 7.4(1)) The Owner/Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into a agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) No (b) Yes (c) No
Description of land to which this Agreement applies – (section 7.4(3)(a))	See description at Schedule 2 - Item 1.
Description of development to which this Agreement applies – (section 7.4 (3)(b))	See description at Schedule 2 - Item 2.
Description of change to the environmental planning instrument to which this Agreement applies – (section 7.4 (3)(b))	NA
The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4 (3)(c))	See Schedule 3.
Applicability of section 7.11 of the Act – (section 7.4 (3)(d))	This Agreement excludes the application of section 7.11 in respect of the Development.
Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4 (3)(e))	NA

Requirement under the Act	This Agreement
Applicability of section 7.12 of the Act – (section 7.4 (3)(d))	This Agreement excludes the application of section 7.12 in respect of the Development.
Applicability of Division 7.1, Subdivision 4 of the Act – (section 7.4 (3)(d))	This Agreement does not exclude Division 7.1, Subdivision 4 of the Act in respect of the Development.
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 7.
Enforcement of this Agreement – (section 7.4(3)(g))	See clause 4.
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13.
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes
Whether the Planning Agreement specifies that certain requirements of the Agreement must be complied with before a construction certificate is issued – (section 21 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No
Whether the Planning Agreement specifies that certain requirements of the Agreement must be complied with before an occupation certificate is issued – (section 48 of <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>)	No
Whether the Planning Agreement specifies that certain requirements of the Agreement must be complied with before a subdivision certificate is issued – (section 6.15(1)(d) of the Act)	No

Schedule 2 – Land and Development

Item 1 Land to which Agreement applies / Lots proposed for Development

Lot	Deposited Plan	Folio Identifier
1	547700	1/DP547700

Item 2 Development

Demolition of existing structures, construction of a thirteen (13) storey co-living development comprising 305 rooms and associated communal areas as per DA-2024/10.

Item 3 Change to environmental planning instrument

NA

Schedule 3 – Development Contribution

Item 1 – Development Contribution

- (a) The Development Contribution which the Owner/Developer agrees to provide comprises the Monetary Contribution.
- (b) This Schedule 3:
 - (i) describes the Development Contribution and its Public Purpose;
 - (ii) defines the value of the Monetary Contribution which comprises the Development Contribution; and
 - (iii) defines the time by which the Owner/Developer must provide the Development Contribution.

Item 2 – Monetary Contribution

Agreement to provide Monetary Contribution

The Owner/Developer agrees to provide the Monetary Contribution to the Council in accordance with the timing set out in the table below:

Contribution and Public Purpose	Value	Timing for completion
Monetary Contribution towards public purposes relating to open space and / or recreation in the Mascot Station Precinct.	\$3,696,047.95	<p>The later of:</p> <ul style="list-style-type: none"> (a) 28 days from the Commencement Date; and (b) 28 days from the date of the grant of Development Consent to Development Application DA-2024/10.

Schedule 4 – Address for service and Notices

Item 1 Address for service

Council	
Contact:	Peter Barber (Director - City Futures)
Address:	444-446 Princes Highway ROCKDALE NSW 2216
Email:	council@bayside.nsw.gov.au
Owner/Developer	
Contact:	Tim Manning Head of Development
Address:	Level 10, 32 York Street SYDNEY NSW 2000
Email:	tmanning@iglu.com.au
Panel	
Contact:	Mr Carl Scully
Address:	4 Parramatta Square, 12 Darcy Street PARRAMATTA NSW 2150 Locked Bag 5022, PARRAMATTA NSW 2124
Email:	enquiry@planningpanels.nsw.gov.au

Item 2 Time for doing acts

1. If:
 - (a) the time for doing any act or thing required to be done; or
 - (b) a notice period specified in this Agreement,
 expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
2. If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

Item 3 Notice provisions

1. Any notice, demand, consent, information, application, approval, request or other communication (**Notice**) that must or may be given or made to a Party under this Agreement must be in writing and must be given to the recipient at its Address for Service by being:
 - (a) hand delivered;
 - (b) sent by prepaid ordinary mail within Australia; or

- (c) sent by email.
2. If a Party gives the other Party 3 Business Day notice of a change of its contact details, any Notice is only given or made by that other Party if it is delivered, posted or emailed to the latest address or email address.
 3. A Notice is taken to have been given at the time stated in column 4, in relation to the method of giving the Notice stated in column 2 below, depending on the timing of delivery if relevant as set out in column 3 of the table below:

Ref.	Method of giving notice	Timing of delivery	When the notice is taken to be given
1	Hand delivery	If delivery occurs after 5pm New South Wales time or a day that is not a Business Day,	The next Business Day.
		If delivery occurs before 5pm New South Wales time on a Business Day,	On the date of delivery.
2	Prepaid ordinary mail within Australia	NA	On the date that is 2 Business Days after the date of posting.
3	Email	If the email is sent before 5 pm on a Business Day, and the sender does not receive a delivery failure notice,	On the date of sending.
		If the email is sent after 5 pm on a Business Day or on a day that is not a Business Day	On the next Business Day after the email is sent.

4. If any Notice is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or it on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

Schedule 5 – Definitions

(clause 1.1)

In this Agreement, unless the context clearly indicates otherwise:

Act	means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Address for Service	means the address of each party appearing in Schedule 4 - Item 1 to this Agreement or any new address notified by any party to all other parties as its new Address for Service.
Agreement	means this planning agreement under which the Owner/Developer agrees to make the Development Contribution.
Business Day	means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.
Claim	includes any claim, demand, damage, loss, expense or liability of any kind (including in respect of interest and including one which is prospective or contingent and one the amount of which is not ascertained) and costs (whether or not the subject of a court order).
Commencement Date	means the date that this Agreement comes into operation in accordance with clause 2.1.
Construction Certificate	has the same meaning as in the Act.
Cost	means any cost, charge, expense, outgoing, payment, fee and other expenditure.
Council	means Bayside Council ABN 80 690 785 443, its successors and assigns.
Development	means the development described at Schedule 2 .
Development Application	has the same meaning as in the Act.
Development Application DA 2024/10	means development application DA-2024/10 lodged with Council.
Development Consent	has the same meaning as in the Act, and includes for the avoidance of doubt development consent to a development application as may be modified from time to time.
Development Contribution	means the contribution which the Owner/Developer agrees to provide under this Agreement as set out in Schedule 3 .
Explanatory Note	means the note exhibited with a copy of this Agreement when this Agreement is made available for inspection by the public pursuant to the Act.
GST	means any form of goods and services tax payable under the GST Law.

GST Law	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.
Land	means the land described in Schedule 2 .
Mediation Rules of the Law Society of NSW	means the mediation rules published by the Law Society of NSW, from time to time.
Monetary Contribution	means the Development Contribution as set out in Schedule 3 .
Owner/Developer	means Iglu No. 216 Pty Ltd ACN 672 097 862 in its capacity as trustee of Iglu Property Trust No. 216 and its successors and permitted assigns.
Owner/Developer's obligations	means the Owners/Developer's obligations under this Agreement.
Panel	means the Sydney Eastern City Planning Panel constituted under the Act.
Party	means a party to this Agreement, including its successors, agents and assigns.
Public Purpose	has the same meaning as in s 7.4 of the Act.
Register	means the Torrens Title register maintained under the <i>Real Property Act 1900</i> (NSW).
Resolution Institute	means the dispute resolution organisation named the 'Resolution Institute' operating in Australia (and New Zealand), being a dispute resolution organisation formed by the merger of the Institute of Arbitrators and Mediators Australia and Lawyers Engaged in Alternative Dispute Resolution in 2015.

Schedule 6 – Interpretation

- (a) Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.
- (b) The Explanatory Note must not be used to assist in construing this Agreement.
- (c) If any clause or part of any clause in this Agreement is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this Agreement without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.
- (d) In this Agreement unless the context clearly indicates otherwise:
 - (i) a reference to **this Agreement** or another document means this Agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;

- (ii) a reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.
- (iii) a reference to any **law, legislation** or a **legislative provision** includes any statutory modification, amendment, re-enactment or substitution of that law, legislation or legislative provision and any subordinate legislation or regulations issued under that law, legislation or legislative provision;
- (iv) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (v) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this Agreement;
- (vi) **headings** are inserted for convenience only and do not affect the interpretation of this Agreement;
- (vii) **table of contents** is inserted for convenience only and does not form part of this Agreement;
- (viii) a reference to a **Business Day** means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day;
- (ix) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next business day;
- (x) a reference to a \$ value relating to a Development Contribution is a reference to the value exclusive of GST;
- (xi) the **introduction**, **appendixes**, **schedules** (if any), attachments (if any) and **annexures** (if any) form part of this Agreement;
- (xii) the **introduction** accurately sets out the circumstances in which the parties have entered into this Agreement;
- (xiii) a reference to a **person** includes a natural person, company, corporation, trust, statutory corporation, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority, the Crown, governmental agency or any other organisation or legal entity;
- (xiv) a reference to a **natural person** includes their personal representatives, successors, and permitted assigns;
- (xv) a reference to a **corporation** includes its successors and permitted assigns;
- (xvi) **related** or **subsidiary** in respect of a corporation has the same meaning given to that term in the Corporations Act;
- (xvii) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Agreement;

- (xviii) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (xix) a reference to a **breach of warranty** includes that warranty not being complete, true or accurate;
- (xx) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (xxi) **including** and **includes** are not words of limitation;
- (xxii) notes appearing in the Agreement are operative provisions of this Agreement;
- (xxiii) the words **at any time** mean at any time and from time to time;
- (xxiv) a reference to a time is to that time in New South Wales;
- (xxv) a word that is derived from a defined word has a corresponding meaning;
- (xxvi) **monetary amounts** are expressed in Australian dollars;
- (xxvii) the singular includes the plural and vice-versa;
- (xxviii) words importing one gender include all other genders; and
- (xxix) a reference to a thing includes each part of that thing.

Execution page

Executed as an agreement

Executed on behalf of Bayside Council ABN 80
690 785 443 by its authorised delegate pursuant
to section 377 of the Local Government Act 1993
in the presence of:

.....
Signature of witness

.....
Signature

.....
Name of witness in full

.....
Name of signatory

.....
Address of witness

Executed on behalf of Sydney Eastern City
Planning Panel, c/- Planning Panels Secretariat,
320 Pitt Street, Sydney NSW 2000

.....
Chairperson (sign)

.....
Panel member (sign)

.....
Name of Chairperson

.....
Name of Panel Member

Executed by Iglu No. 216 Pty Ltd (ACN 672 097 862) in its capacity as trustee of Iglu Property Trust No. 216 in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Signature of Director

.....
Signature of Director

.....
Name of director in full

.....
Name of director in full

Appendix (Explanatory Note)

Environmental Planning and Assessment Regulation 2021

(section 205)

Explanatory Note: Proposed Planning Agreement

Under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)*

1. Parties

Bayside Council ABN 80 690 785 443 of 444 - 446 Princes Highway, ROCKDALE NSW 2216

(Council)

and

Sydney Eastern City Planning Panel (**Panel**)

and

Iglu No. 216 Pty Ltd (ACN 672 097 862) in its capacity as trustee of **Iglu Property Trust No. 216** of Level 10, 32 York Street SYDNEY NSW 2000

(Owner/Developer)

2. Description of the Land to which the proposed Planning Agreement applies

- (a) Lot 1 in Deposited Plan 547700 known as 13A Church Avenue, Mascot NSW 2020 (Land);
- (b) The Owner/Developer is the owner of the Land.

3. Description of the Development

Demolition of existing structures, construction of a thirteen (13) storey co-living development comprising 305 rooms and associated communal areas as per DA-2024/10 (**Development**).

4. Summary of objectives, nature and effect of the proposed Planning Agreement

4.1 Objectives of proposed Planning Agreement

- (c) The objectives of the proposed Planning Agreement are to:
 - (i) Provide Development Contributions for the benefit of the public in the form of the payment of \$3,696,047.95 towards public purposes relating to open space and/or recreation in the Mascot Station Precinct.
 - (ii) Achieves the provision of this Development Contribution for public domain improvements with greater certainty, less risk and less cost to Council.

4.2 Nature of proposed Planning Agreement

The Planning Agreement is a planning agreement under section 7.4 of the Act. The Planning Agreement is a voluntary agreement under which the Development Contribution (as defined in clause 1.1 and Schedule 5 of the Planning Agreement) are made by the Owner/Developer for public purposes (as defined in section 7.4(2) of the Act).

4.3 Effect of proposed Planning Agreement

The Planning Agreement:

- (e) Provides for the payment of a monetary contribution by the Owner/Developer to Council in the sum \$3,696,047.95 towards public purposes relating to open space and / or recreation in the Mascot Station Precinct.
- (f) Achieves the provision of this Development Contribution for public domain improvements with greater certainty, less risk and less cost to Council.

5. Assessment of the merits of the proposed Planning Agreement

5.1 The Public Purposes served by the proposed Planning Agreement

The proposed Planning Agreement promotes the provision of and recoupment of the cost of providing public amenities and public services, in this case public amenities and public services relating to open space and/or recreation in the Mascot Station Precinct.

5.2 How the proposed Planning Agreement promotes the Public Interest and the objects of the Act

- (e) The Planning Agreement promotes the public interest and the objects of the Act as set out in section 1.3 the Act, including:
 - (i) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
 - (ii) to promote the orderly and economic use and development of land,
 - (iii) to promote good design and amenity of the built environment.
- (f) The Planning Agreement promotes the provision of and recoupment of the cost of providing public amenities and public services, in this case public amenities and public services relating to open space and/or recreation in the Mascot Station Precinct.

5.3 The Elements of the Council's Charter/ guiding principles for councils

The proposed Planning Agreement promotes the elements of the Council's Charter/ guiding principles for councils by providing for the ultimate delivery of appropriate infrastructure, public

amenities and services for the local community, which enables the Council to carry out its functions in a way that facilitates local communities that are strong, healthy and prosperous.

5.4 How the proposed Planning Agreement promotes the objects (if any) of the Local Government Act 1993

The proposed Planning Agreement promotes the objects of the *Local Government Act 1993* by allowing Council to provide infrastructure, public amenities and services appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area.

5.5 Whether the proposed Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued

The proposed Planning Agreement specifies that the Owner/Developer must make the Development Contribution by the later of:

- (a) 28 days from the Commencement Date; and
- (a) 28 days from the date of the grant of Development Consent to Development Application DA-2024/10.

In the event the Development Contribution has not been paid to Council in accordance with Schedule 3 of the Agreement, in breach of the Agreement, no Construction Certificate can be issued in relation to any Development Consent granted to Development Application DA-2024/10.

5.6 Whether the proposed Planning Agreement conforms with the authority's capital works program

The proposed Planning Agreement conforms to Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.

6. Further Information

6.1 Interpretation

Note: This explanatory note is a summary only of the proposed Planning Agreement, is not to be relied upon as a complete description of the proposed Planning Agreement, and is not to be used as an aid in construing the proposed Planning Agreement.

6.2 Further Information

Copies of the proposed Planning Agreement are available on the Council website, and at the offices of Council.