

Planning agreement

The Council of the City of Sydney ABN 22 636 550 790

and

PG Wealth Pty Ltd ACN 130 480 885

and

JCDecaux Australia Trading Pty Ltd ACN 059 604 278

For Electronic Signage at 169-173 Darlinghurst Road

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THIS PLANNING AGREEMENT is made on

2023

BETWEEN:

- (1) The Council of the City of Sydney ABN 22 636 550 790 of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the City);
- (2) PG Wealth Pty Ltd ACN 130 480 885 of Level 1, 56 Clarence Street SYDNEY NSW 2000 (the Landowner); and
- (3) JCDecaux Australia Trading Pty Limited (ACN 059 604 278) of Level 6, 1 York Street SYDNEY NSW 2000 (the Developer).

BACKGROUND

- (A) The Landowner is the owner of the Land.
- (B) The Developer intends to undertake the Development on the Land.
- (C) The Developer has offered to enter into this planning agreement with the City to provide the Public Benefits on the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Advertising Deed means an advertising deed in the form attached as Annexure A to this document.

Attributed Value means the value the City and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in Schedule 3 of this document.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Policies means all policies and procedures relevant to the provision of the Public Benefits, as notified by the City in writing to the Developer.

City's Representative means the person named in Item 3 of Schedule 1 or his/her delegate.

Confidential Information means:

- (a) information of a party (disclosing party) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (receiving party), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (b) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (c) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (d) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Construction Certificate has the same meaning as in the Act.

Dealing means selling, transferring, assigning, novating, mortgaging, charging or encumbering and, where appearing, Deal has the same meaning.

Developer's Representative means the person named in Item 4 of Schedule 1 or his/her delegate.

Development means the development of the Land by the Developer described at Item 2 of Schedule 1.

Development Application means the development application identified in Item 5 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted to the Development Application for the Development and includes all modifications of the Development Consent granted under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011* (NSW);
- (b) the *Protection of the Environment Operations Act 1997* (NSW); and
- (c) the *Contaminated Land Management Act 1997* (NSW).

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST means the same as in the GST Act.

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

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Land means the land described in Item 1 of Schedule 1 of this document.

Landowner's Representative means the person named in Item 4A of Schedule 1 (or his/her delegate).

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

Lease means registered lease AJ463805.

Occupation Certificate has the same meaning as in the Act.

Personal Information means:

- (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* (NSW);
- (b) health information within the meaning of the *Health Records and Information Privacy Act 2002* (NSW); and
- (c) any information which does not fall within the scope of paragraphs (a) and (b) above, but is personal information within the meaning of the *Privacy Act 1988* (Cth).

Personnel means the **Developer's** officers, employees, agents, contractors or subcontractors.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW); the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, regulations, guidelines, codes and the City's policies relating to the handling of Personal Information.

Public Benefits means the provision of benefits to the community by the Developer in the form and at the times specified in clause 5 and Schedule 3.

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to including **means "including, without limitation"**.
- (g) A reference to dollars or \$ is to an amount in Australian currency.
- (h) A reference to this document includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. APPLICATION OF THE ACT AND THE REGULATION

2.1 Application of this document

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to the Development on the Land.

2.2 Public Benefits to be made by Developer

Clause 5 and Schedule 3 set out the details of the:

- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

2.3 Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.

2.4 City rights

This document does not impose an obligation on the City to:

- (a) grant Development Consent for the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

2.5 Explanatory note

The explanatory note prepared in accordance with clause 205 of the Regulation must not be used to assist in construing this document.

3. OPERATION OF THIS PLANNING AGREEMENT

3.1 Commencement

This document will commence and operate on the date of execution of this document by all parties to this document.

4. WARRANTIES

4.1 Mutual warranties

Each party represents and warrants that:

- (a) (power) it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) (corporate authority) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (Authorisations) it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted,

and it is complying with any conditions to which any of these Authorisations is subject;

- (d) (documents effective) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) (solvency) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (no controller) no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 Landowner warranties

The Landowner warrants to the City that, at the date of this document:

- (a) it is the registered proprietor of the Land;
- (b) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document; and
- (c) it is not aware of any matter which may materially **affect the Landowner's** ability to perform its obligations under this document.

4.3 Developer warranties

The Developer warrants to the City that, at the date of this document:

- (a) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document; and
- (b) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the **Developer's** size and experience; and
- (c) it is not aware of any matter which may materially affect the **Developer's** ability to perform its obligations under this document; and
- (d) prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

5. PUBLIC BENEFITS

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document and the Advertising Deed.

6. INDEMNITY

- (a) The Landowner indemnifies the City against all damage, expense, loss or liability of any nature suffered or incurred by the City arising from any act or omission by the Landowner in connection with the performance of the **Landowner's obligations under this document, except where the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).**
- (b) The Developer indemnifies the City against all damage, expense, loss or liability of any nature suffered or incurred by the City arising from any act or omission by the Developer (or any Personnel) in connection with the **performance of the Developer's obligations under this document, except to the extent the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).**

7. REGISTRATION

7.1 Registration of this document

- (a) The Landowner:
 - (i) consents to the registration of this document at the NSW Land Registry Services on the title to the Land following the grant of Development Consent;
 - (ii) warrants that it has obtained all consents to the registration of this document on the title to the Land;
 - (iii) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the title to the Land, including but not limited to producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and
 - (iv) must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.
- (b) The Developer:
 - (i) consents to the registration of this document at the NSW Land Registry Services on the title to the Land following the grant of Development Consent;
 - (ii) warrants that it has obtained all consents to the registration of this document on the title to the Land;
 - (iii) is responsible for all costs in relation to the preparation of the sketch plan attached at Annexure B to this document;

- (iv) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the title to the Land, including but not limited to:
 - (A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and
 - (B) providing the City with payment for registration, electronic lodgement and requisition fees (where applicable) required for registration of this document at NSW Land Registry Services; and
- (v) must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

7.2 Release of this document

- (a) If the City is satisfied that the Developer has provided all Public Benefits and otherwise complied with this document then the City must promptly do all things reasonably required to remove this document from the title to the Land.
- (b) The Developer must, within 10 Business Days of a written request from the City, do all things necessary to allow the City to comply with clause 9.3(a), including but not limited to:
 - (i) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and
 - (ii) providing the City with payment for registration, lodgement and requisition fees (where applicable) required for removal of this document from the title to the Land by NSW Land Registry Services.

8. DISPUTE RESOLUTION

8.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 8.

8.2 Negotiation

- (a) If any Dispute arises, a party to the Dispute (Referring Party) may by giving notice to the other party or parties to the Dispute (Dispute Notice) refer the Dispute to the **Landowner's Representative, the Developer's Representative** and the **City's Representative** for resolution (the Representatives). The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 8; and

- (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (Resolution Period), the Representatives must meet at least once to attempt to resolve the Dispute.
- (c) The Representatives may meet more than once to resolve a Dispute. The Representatives may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.

8.3 Not use information

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the Dispute.

8.4 Condition precedent to litigation

Subject to clause 8.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

8.5 Summary or urgent relief

Nothing in this clause 8 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

9. TAXES AND GST

9.1 Responsibility for Taxes

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation

(as amended from time to time) as a result of or in connection with this document or the Public Benefits.

- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 9.1(a).

9.2 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

9.3 Supply subject to GST

To the extent that clause 9.2 does not apply to a supply made under this document, this clause 9.3 will apply.

- (a) If one party (Supplying Party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (Receiving Party) must also pay an amount (GST Amount) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 9.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 9.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 9.3.
- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and

- (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

10. DEALINGS

10.1 Dealing by the City

- (a) The City may Deal with its interest in this document without the consent of the Developer and the Landowner if the Dealing is with a Government Agency. The City must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Landowner and the Developer, such consent not to be unreasonably withheld or delayed.

10.2 Dealing by the Landowner

- (a) Prior to registration of this document in accordance with clause 7, the Landowner must not Deal with this document or the Land without:
 - (i) the prior written consent of the City; and
 - (ii) the City, the Landowner, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.
- (b) On and from registration of this document in accordance with clause 7:
 - (i) the Landowner may Deal with this document without the consent of the City only as a result of the sale of the whole of Lot B in DP 387870 known as 169-173 Darlinghurst Road, Darlinghurst NSW 2010 (without subdivision) to a purchaser;
 - (ii) the Landowner may register a plan of strata subdivision, and the City consents to this document remaining registered only on title to the common property of the strata plan upon registration of the strata plan; and
 - (iii) the Landowner must not otherwise Deal with this document or Deal with the Land to a third party that is not a purchaser of the whole or any part of Lot B in DP 387870 known as 169-173 Darlinghurst Road, Darlinghurst NSW 2010 without:
 - (A) the prior written consent of the City; and
 - (B) the City, the Landowner, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.
- (c) The Landowner **must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 10.2.**

10.3 Dealing by the Developer

- (a) The Developer must not Deal with this document or the Land without:
 - (i) the prior written consent of the City; and
 - (ii) the City, the Landowner, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.
- (b) **The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 10.3.**

10.4 Termination of Lease

Notwithstanding any other provision of this document, on the termination of the Lease, and provided no rights under property law are granted by the Landowner to the Developer, the Developer is released by the City from any and all obligations under this document.

11. TERMINATION

- (a) The City or the Developer may terminate this document by notice in writing to the other parties if the Development Consent is not granted, or it expires, is revoked, lapses, or is surrendered by the Developer.
- (b) If this document is terminated under clause 11(a) then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss any party may suffer as a result of the termination of this document; and
 - (iii) **the City will, at the Developer's cost, do all things reasonably required to remove this document from the title to the Land.**

12. CONFIDENTIALITY, DISCLOSURES AND PRIVACY

12.1 Use and disclosure of Confidential Information

A party (receiving party) which acquires Confidential Information of another party (disclosing party) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 12.2 or 12.3.

12.2 Disclosures to personnel and advisers

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 12.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 12.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 12.2(b)(i).

12.3 Disclosures required by law

- (a) Subject to clause 12.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 12.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

12.4 Receiving party's return or destruction of documents

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

12.5 Security and control

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

12.6 Media releases

The Developer and the Landowner must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits without the City's prior written consent.

12.7 Privacy

- (a) Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Developer:
 - (i) must not, directly or indirectly collect, use or disclose any Personal Information under or in connection with this document except to the extent necessary to perform its obligations under this document; and
 - (ii) must in the delivery of the Public Benefits and the performance of all its other obligations under this document comply with the Privacy Laws and must not do any act or engage in any practice that would breach the Privacy Laws or which if done or engaged in by the City would be a breach of any Privacy Laws.

13. NOTICES

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.

- (b) A person's address and email address are those set out in Schedule 1 for **the City's Representative, the Landowner's Representative** and the **Developer's Representative**, or as the person notifies the sender in writing from time to time.

14. GENERAL

14.1 Governing law

- (a) This document is governed by the laws of New South Wales.
- (b) 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 document, and waives any right it might have to claim that those courts are an inconvenient forum.

14.2 Access to information

In accordance with section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Developer and the Landowner agree to allow the City immediate access to the following information contained in records held by the Developer or the Landowner:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer or the Landowner from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer or the Landowner from the City to enable the Developer to deliver the Public Benefits.

14.3 Liability for expenses

- (a) The Developer must pay its own **and the City's** expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulations and for any consent the City is required to provide under this document.

14.4 Relationship of parties

- (a) Nothing in this document 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.**

14.5 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

14.6 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this document,

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.

(b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

14.7 Severance

If any clause or part of any clause 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 document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

14.8 Preservation of existing rights

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

14.9 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 document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

14.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

14.11 Operation of this document

- (a) This document and the Advertising Deed contain the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and the Advertising Deed and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

14.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

14.13 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

14.14 No fetter

Nothing in this document **in any way restricts or otherwise affects the City's** unfettered discretion to exercise its statutory powers as a public authority.

14.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	The land shown in the sketch plan attached at Annexure B, being that that part of Lot B in DP 387870 known as 169-173 Darlinghurst Road, Darlinghurst NSW 2010 subject to the Lease.
2.	Development	Upgrade of existing freestanding advertising structure in situ at the current site on the Land, including removal of existing screen and replace with a new screen of equivalent size and positioning, replacement of support frame, replacement of JCDecaux logo, retention of façade extension on Darlinghurst Road and ongoing operation of the new screen.
3.	City's Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email: gjahn@cityofsydney.nsw.gov.au</p> <p>Or such alternative representative nominated by the City from time to time and notified in writing to the Developer's Representative</p>
4.	Developer's Representative	<p>Name: Damien Rath, General Manager - Development</p> <p>Address: Level 6, 1 York Street, Sydney NSW 2000</p> <p>Email: damien.rath@jcdecaux.com</p> <p>Or such alternative representative nominated by the Developer from time to time and notified in writing to the City's Representative</p>
4A.	Landowner's Representative	<p>Name: Peter George</p> <p>Address: PO Box 488 Edgecliff 2027</p> <p>Email: info@mannproperty.com.au</p> <p>Or such alternative representative nominated by the Landowner from time to time and notified in</p>

		writing to the City's Representative and Developer's Representative
5.	Development Application	D/2022/911

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
2.	Description of land to which this document applies (section 7.4(3)(a) of the Act)	Item 1 of Schedule 1.
3.	Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)	The Development as described in clause 1.1.
4.	The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)	Schedule 3.
5.	Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)	<p>Section 7.11 not excluded</p> <p>Section 7.12 not excluded</p> <p>Section 7.24 not excluded</p>

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
6.	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 8
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 7
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 7
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (section 205(2) of the Regulation)	Not applicable
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (section 205(2) of the Regulation)	Not applicable
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (section 205(2) of the Regulation)	Parties to enter into the Advertising Deed set out at Annexure A
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (section 205(5) of the Regulation)	Clause 2.5

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS - OVERVIEW

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

	Public Benefit	Attributed Value	Due date	Additional specifications
1.	Provision of advertising time dedicated to the City for the purposes of community messaging. The allotted advertising time is equal to one sixth of the total advertising time displayed on the sign the subject of the Development Consent to be spread evenly across any given 24 hour period.	\$Nil	From the grant of an occupation certificate in respect of the Development and ending in accordance with this agreement.	Nil

2. ADVERTISING DEED

On or before the date of the grant of an Occupation Certificate for the Development, the Developer must enter into the Advertising Deed.

EXECUTION

EXECUTED as a deed.

Signed, sealed and delivered for
THE COUNCIL OF THE CITY OF
SYDNEY (ABN 22 636 550 790) by
its duly authorised officer, in the
presence of:

Signature of officer

Signature of witness

Name of officer

Name of witness

Position of officer

456 Kent Street, Sydney NSW 2000

Authorised delegate pursuant to section
377 of the Local Government Act 1993

Address of witness

EXECUTED by PG WEALTH PTY LTD
(ACN 130 480 885) in accordance with
s127(1) of the Corporations Act 2001
(Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by JCDECAUX
AUSTRALIA TRADING PTY LTD
(ACN 059 604 278) in accordance with
s127(1) of the Corporations Act 2001
(Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE "A"- ADVERTISING DEED

Advertising Deed

The Council of the City of Sydney

and

JC Decaux Australia Trading Pty Limited

ACN 059 604 278

For Signage at 169-173 Darlinghurst Road, Darlinghurst

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THIS DEED is made on

2023.

BETWEEN:

- (1) The Council of the City of Sydney ABN 22 636 550 790 of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the City); and
- (2) JCDecaux Australia Trading Pty Ltd ACN 059 604 728 of Level 6, 1 York Street SYDNEY NSW 2000 (the Advertiser).

BACKGROUND

- (A) The Advertiser has the right to operate the Sign located within Lot B in SP46789 located at 169-173 Darlinghurst Road, Darlinghurst NSW 2000 (the Land).
- (B) A Planning Agreement requires the owner of the Land to ensure that the Advertiser does not commence operating the Sign without first offering to enter into an advertising deed with the City.
- (C) The City and the Advertiser have agreed to enter into this Deed as a requirement of the Planning Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Advertising Content means any content provided by the City for display on the Sign.

Advertising Time means one sixth of the total advertising time displayed on the Sign to be spread evenly across any given 24 hour period.

Artwork Address means the email or portal address provided by the Advertiser to the City from time-to-time for the receipt of Advertising Content from the City.

Business Day means a day that is not a Saturday, Sunday or public holiday in New South Wales.

Development Application means the development application lodged with the City with respect to the Sign that is known as D/2022/911.

Development Consent means the consent granted to the Development Application and includes all modifications made under the Act.

Emergency Messaging means any message concerning an event that presents an imminent and serious threat to life or injury to persons within the City of Sydney local government area.

Media Upload Fee means the fee charged per community advertisement or message constituting the Advertising Content for display in an Advertising Cycle.

Personnel means the officers, employees, agents and contractors (including their employees and contractors) of that party.

Production Guidelines means the technical specifications for the Advertising Content to be displayed by the Advertiser on the Sign, being specifications determined by the Advertiser from time-to-time (acting reasonably) and notified to the City.

Sign means the digital LED display sign located within the Land.

Term means the period of time that the Advertiser is operating the Sign.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to including **means "including, without limitation"**.
- (g) A reference to dollars or \$ is to an amount in Australian currency.

- (h) A reference to this document includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. OPERATION OF THIS DEED

2.1 Commencement

This document will commence on the date of execution of this document by all parties to this document.

3. RIGHTS GRANTED TO CITY

3.1 Advertiser to provide the City with Advertising Time

The Advertiser must provide the City with the Advertising Time on the Sign for the Advertising Content in accordance with this document.

3.2 Consistent display of Advertising Content

- (a) In accordance with clause 4.1, the Advertiser must:
 - (i) display the Advertising Content for the Advertising Time; and
 - (ii) ensure the Advertising Content is displayed consistently and equitably no less than every sixth rotation of content displayed on the Sign.
- (b) If it becomes apparent that the Advertiser has not complied with the obligation to display Advertising Content in accordance this clause 3.2, the Advertiser must, as soon as the non-compliance has become apparent, allocate additional time to display the Advertising Content until any identified shortfall in Advertising Content is remedied.
- (c) The display of additional Advertising Time under clause 3.2(b) must take place such that the shortfall is remedied as soon as it is reasonably practicable to do so.

4. ADVERTISING CONTENT

4.1 Approval of Advertising Content

- (a) To ensure the timely and accurate display of Advertising Content, the City must:
 - (i) no later than five (5) Business Days prior to the intended display of the Advertising Content, provide to the Advertiser via the Artwork Address the proposed Advertising Content;
 - (ii) provide the Advertising Content in a form complying with the Production Guidelines and apply a identifiable name to each file (for

example: Advertiser_Campaign Name_Date i.e.
Cityofsydney_NYE_16.12.2018); and

(iii) notify the Advertiser as to the frequency, times of day and/or days of the week that the City would like to see each individual message or advertisement constituting the Advertising Content displayed during the Advertising Time.

(b) If the Advertiser forms the view, acting reasonably, that the proposed Advertising Content provided by the City pursuant to clause 4.1(a) is not in a form suitable for display, it must, on the day it receives the proposed Advertising Content, or within two (2) Business Days afterwards, provide the City with written notice of this and within this notice detail the remedial action the City needs to take to so that the City can be resupply the Advertising Content in a compliant form.

4.2 No third party advertising

The parties acknowledge and agree that:

- (a) the Advertising Content must not contain any third-party placements (excluding sponsors); and
- (b) the Advertising Content must objectively be for a public purpose (and cannot be for a private purpose).

4.3 Records

The Advertiser agrees to keep records and store Advertising Content provided by the City for a period of 12 months after that Advertising Content ceases to be displayed on the Sign without any fee or charge to the City, after which time the Advertising Content may be destroyed at the Advertiser's discretion.

5. ADVERTISING TIME

The Advertising Time does not accumulate (and the obligation under clause 3.2 does not apply):

- (a) to the extent that any Advertising Time that is not taken up by the City in a 24-hour period is forfeited to the Advertiser; and
- (b) for any period of time that the Sign is not operational.

6. NO FEES PAYABLE

6.1 No fees payable

The Advertiser acknowledges and agrees that the City is not required to pay any fees (including but not limited to Media Upload Fees) for:

- (a) the Advertising Time displaying Advertising Content, including but not limited to artwork upload fees; and
- (b) any Emergency Messaging that the Advertiser displays on the Sign as requested by the City.

6.2 City responsible for artwork costs

The City will bear its own costs in relation to the creation of artwork, the reformatting of files or any other works that may be necessary to ensure the Advertising Content is suitable and/or in the correct format to be displayed on the Sign.

7. EMERGENCY MESSAGING

7.1 Requested by the City

The City may, at any time, request that the Advertiser display Emergency Messaging on the Sign.

7.2 Advertiser must display

As soon as practicable after receiving the Advertising Content for any Emergency Messaging from the City (and in any event, no later than 24 hours after receiving the Advertising Content), the Advertiser will, subject to it having no commitments with other advertisers that would prohibit or prevent it from displaying the Emergency Messaging, display the Emergency Messaging on the Sign, but only during the period in which the relevant imminent and serious threat to life or injury to persons within the City of Sydney local government area is continuing (and in any event, for no longer than seven days).

7.3 Production Guidelines to apply to Emergency Messaging

The City will provide the Advertising Content for any Emergency Messaging in conformity with the Production Guidelines.

8. REPORTING

8.1 Not used

8.2 Progress reports

The Advertiser must deliver to the City during the Term a monthly written report providing full details of:

- (a) the Advertiser's progress in supplying the Advertising Time and ability to other action items;
- (b) details of the Advertiser's compliance with this document, specifically:
 - (i) the name or description of item of Advertising Content;
 - (ii) the date and time of display of each item of Advertising Content; and
 - (iii) the duration of display of each item of Advertising Content;
 - (iv) a report showing planned Advertising Time against actual advertising time for the last month and percentage of actual time that the Advertising Content was displayed;

and

- (c) such other information in relation to this document as the City may from time to time reasonably request.

8.3 Content of reports

The Advertiser must ensure that all reports provided under this clause 8:

- (a) contain all required information, including but not limited to the current contact information of the person who is managing the Sign on behalf of the Advertiser; and
- (b) are accurate and not misleading in any respect.

9. WARRANTIES

9.1 Mutual warranties

Each party represents and warrants that:

- (a) (power) it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) (corporate authority) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (Authorisations) it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) (documents effective) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) (solvency) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (no controller) no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

9.2 Advertiser warranties

The Advertiser warrants to the City that, at the date of this document and every point of time in the future:

- (a) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;
- (b) all work performed by the Advertiser and its Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Advertiser's size and experience; and
- (c) it is not aware of any matter which may materially affect the Advertiser's ability to perform its obligations under this document.

9.3 City warranties

The City warrants to the Advertiser that, at the date of this document and every point in time in the future:

- (a) any Advertising Content provided to the Advertiser by the City does not breach any laws, standards or guidelines that the Advertising Content must or should comply with; and
- (b) the Advertising Content that will be provided to the Advertiser does not breach any rights of a third party.

10. INDEMNITY

- (a) The Advertiser indemnifies the City against all reasonably foreseeable damage, expense, loss or liability of any nature suffered or incurred by the City arising from any act or omission by the Advertiser (or any Personnel) in connection with the performance of the Advertiser's **obligations under** this document, except to the extent that the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).
- (b) The City indemnifies the Advertiser against all reasonably foreseeable damage, expense, loss or liability of any nature suffered or incurred by the Advertiser arising from any act or omission by the City (or any Personnel) in connection with the performance **of the City's obligations under this** document, except to the extent the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the Advertiser (or any person engaged by the Advertiser).

11. DISPUTE RESOLUTION

11.1 Application

Any Dispute must be determined in accordance with the procedure in this clause 10(b).

11.2 Negotiation

- (a) If any Dispute arises, a party to the Dispute (Referring Party) may by giving notice to the other party or parties to the Dispute (Dispute Notice) refer the Dispute to the Advertiser's Representative and the **City's** Representative for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 10(b); and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (Resolution Period), the Advertiser's Representative and the **City's** Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Advertiser's Representative and the **City's** Representative may meet more than once to resolve a Dispute. The Advertiser's Representative and the **City's Representative** may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.

11.3 Not use information

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 10(b) is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process undertaken under this clause 10(b) for any purpose other than in an attempt to settle the Dispute.

11.4 Condition precedent to litigation

Subject to clause 11.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

11.5 Summary or urgent relief

- (a) Nothing in this clause 10(b) will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute; or
- (b) instituting class 1 proceedings within the meaning of the *Land and Environment Court Act 1979*.

12. TAXES AND GST

12.1 Responsibility for Taxes

- (a) The Advertiser is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document.
- (b) The Advertiser must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Advertiser is responsible under clause 12.1(a).

12.2 GST free supply

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

12.3 Supply subject to GST

To the extent that clause 12.2 does not apply to a supply made under this document, this clause 12.3 will apply.

- (a) If one party (Supplying Party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (Receiving Party) must also pay an amount (GST Amount) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 12.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under

clause 12.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.

- (e) The Advertiser will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 12.3.
- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

13. TERMINATION

- (a) Either party may terminate this document, by giving notice in writing to the other party, if:
 - (i) the Development Consent lapses;
 - (ii) the Development Consent is surrendered;
 - (iii) the Development Consent is revoked;
 - (iv) the Advertiser no longer has a right in property law to operate the Sign; or
 - (v) the Planning Agreement which required the entry into this document is removed from the title of the Land.
- (b) Either party may terminate this document immediately, by giving notice in writing to the other party, if:
 - (i) a substantial breach of this document is committed and which is not remedied within 7 days of written notification; or
 - (ii) there is:
 - (A) a pattern of repeated unremedied minor breaches over an extended period of time;
 - (B) those breaches have not been remedied under clause 3.2(b); and
 - (C) attempts to resolve the issue(s) underlying the pattern have been attempted under clause 11 and have not been successful.
- (c) If this document is terminated, then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected; and

- (ii) the parties must take all steps reasonably necessary to minimise any loss the other party may suffer as a result of the termination of this document.

14. CONFIDENTIALITY AND DISCLOSURES

14.1 Use and disclosure of Confidential Information

A party (receiving party) which acquires Confidential Information of another party (disclosing party) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 14.2 or 14.3.

14.2 Disclosures to personnel and advisers

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 14.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 14.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 14.2(b)(i).

14.3 Disclosures required by law

- (a) Subject to clause 14.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.

- (b) If the receiving party is required to make a disclosure under clause 14.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

14.4 Receiving party's return or destruction of documents

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

14.5 Security and control

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

15. NOTICES

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted.

- (b) A person's address is set out in Schedule 1 for the **City's Representative** and the **Advertiser's Representative**, or as the person notifies the sender in writing from time to time.

16. GENERAL

16.1 Governing law

- (a) This document is governed by the laws of New South Wales.
- (b) 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 document, and waives any right it might have to claim that those courts are an inconvenient forum.

16.2 Access to information

In accordance with section 121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Advertiser agrees to allow the City immediate access to the following information contained in records held by the Advertiser:

- (a) information that relates directly to the delivery of the Advertising Content by the Advertiser;
- (b) information collected by the Advertiser from members of the public to whom the Advertiser provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Advertiser from the City to enable the Advertiser to deliver the Advertising Content,

but this does not include information referred to in section 121(2) of the *Government Information (Public Access) Act 2009 (NSW)*.

16.3 Liability for expenses

The Advertiser must pay its own expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.

16.4 Relationship of parties

- (a) Nothing in this document 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.**

16.5 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

16.6 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this document,

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.

- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

16.7 Severance

If any clause or part of any clause 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 document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.8 Preservation of existing rights

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

16.9 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 document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

16.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

16.11 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

16.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

16.13 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Advertiser,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

16.14 No fetter

Nothing in this document **in any way restricts or otherwise affects the City's** unfettered discretion to exercise its statutory powers as a public authority.

16.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Details

ITEM	TERM	DESCRIPTION
1.	City's Representative	Name: Advertising Manager Address: Level 1, 456 Kent Street, Sydney NSW 2000 Email: jelias@cityofsydney.nsw.gov.au Phone: 02 9246 7210
2.	Advertiser's Representative	Name: <i>[insert name]</i> Address: <i>[insert street address]</i> Email: <i>[insert email]</i> Phone: <i>[insert phone number]</i>

EXECUTED as a deed.

Signed, sealed and delivered for
THE COUNCIL OF THE CITY OF
SYDNEY by its duly authorised
officer, in the presence of:

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000
Address of witness

EXECUTED by JCDECAUX
AUSTRALIA TRADING PTY LTD
ACN 059 604 278 in accordance with
s127(1) of the Corporations Act 2001
(Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE "B"- SKETCH PLAN

'A' - LEASE AREA FOR SIGN - 3.81 m²
LIMITED IN HEIGHT TO RL.55.49 A.H.D.
LIMITED IN DEPTH TO RL.52.14 A.H.D.

ORIGIN OF LEVELS SSM 176733 RL.38.51 A.H.D.
SOURCED FROM SCIMS ON 10/02/2023

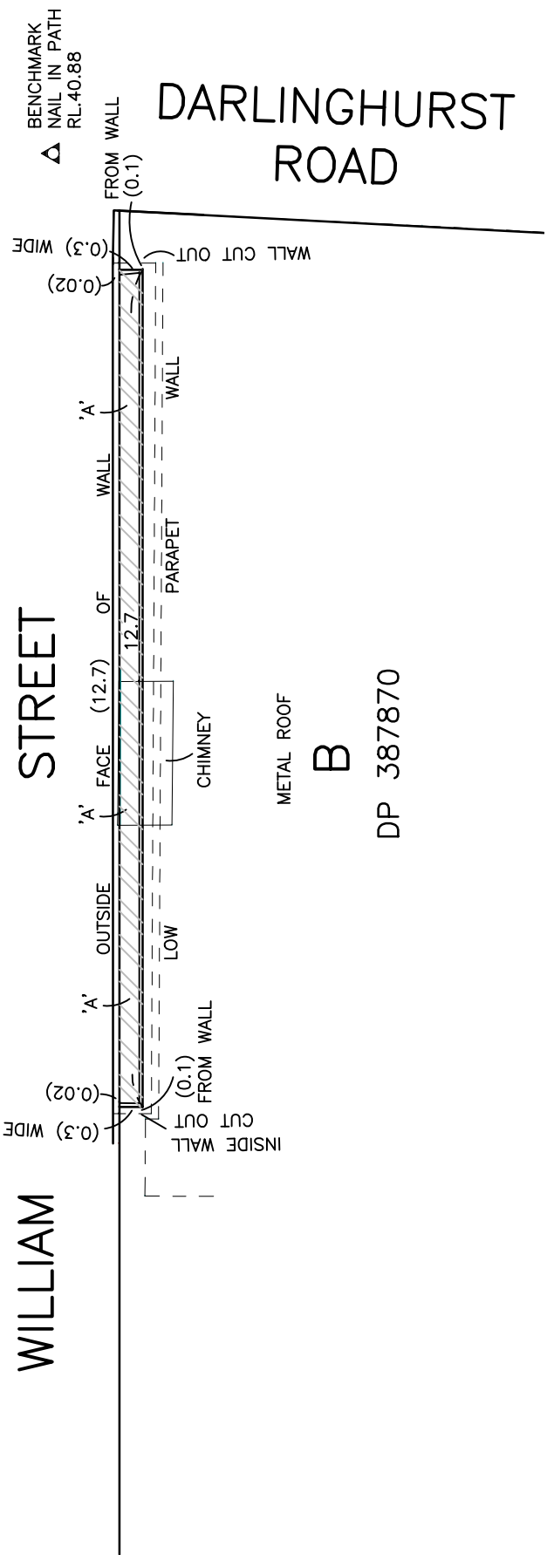
DARLINGHURST ROAD

WILLIAM STREET

1	SEE DIAGRAM
DP 77410	B DP 387870

SP 15828

SITE PLAN
N.T.S.



ROOF LEVEL
SCALE 1:100

M.G.A



	Job Title PLAN OF PREMISE LEASE AREA 169 DARLINGHURST RD DARLINGHURST	Plan No.: SY075761.000.1.2
	Client JCDECAUX AUSTRALIA	L. G. A. CITY OF SYDNEY
Surveyor: RJ	Date of Survey: 15/02/2023	Drawn By: SF
Reduction Ratio: 1:100	Sydney Office Level 2, 25-29 South Street Sydney NSW 2117 PO Box 1144 Dundas NSW 2117 P: (02) 9656 2000 F: (02) 9656 2001 www.landpartners.com.au	
Registered Land Surveyor - SU008474 Roderick Japhison, B.E. Surv&S.I.S.		