

Third Deed of Variation of Planning Agreement

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

and

Lendlease (Circular Quay) Pty Limited ABN 18 604 906 685 as
trustee for the Lendlease (Circular Quay) Trust ABN 70 131 986
485

Property: 174, 174A and 180 George Street, and 11-15, 12-22 and
17-23 Sai Ying Lane

Reference: S113831

DEED OF VARIATION

THIS DEED is made on the date the Deed is executed by both parties as stated on the Execution page.

PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** ABN 22 636 550 790 of Town Hall House, 456 Kent Street Sydney NSW 2000 (**City**); and
- (2) **LENLEASE (CIRCULAR QUAY) PTY LIMITED ABN 18 604 906 685 as TRUSTEE FOR THE LENLEASE (CIRCULAR QUAY) TRUST ABN 70 131 986 485** of 30-34 Hickson Road Millers Point NSW 2000 (**Developer**)

BACKGROUND

- A. The City and the Developer are parties to the Agreement.
- B. As part of the Agreement, the Developer is required to design and construct a Lane Level Public Plaza and Laneways as part of the Public Benefits component of the Developer's Works.
- C. Whilst the Developer has designed and constructed the Lane Level Public Plaza and Laneways, the Outstanding Laneway Works are required to the Lane Level Public Plaza and Laneways to meet the requirements set out in the Agreement.
- D. As at the date of this Deed of Variation, other development that is occurring on land adjoining the Land is preventing the Outstanding Laneway Works from being completed.
- E. The Developer has requested, and the City has agreed, to an extended timeframe for the delivery of the Outstanding Laneway Works, which are to be documented as a specific, but not additional, item of Developer's Works under the Agreement.
- F. The City and the Developer have agreed to vary the Agreement in the manner set out in this Deed of Variation.

THE PARTIES AGREE AS FOLLOWS:

1 INTERPRETATION

- 1.1 In this Deed of Variation, unless the context otherwise requires:

Agreement means the planning agreement between the City and the Developer dated 25 July 2016, varied by a letter of variation dated 19 March 2018 and a Deed of Variation of Planning Agreement dated 25 May 2022 and a Second Deed of Variation of Planning Agreement dated 9 September 2022.

Deed of Variation means this deed of variation of the Agreement and all annexures, schedules, attachments and exhibits.

- 1.2 The provisions of clause 1.2 of the Agreement apply equally to this Deed of Variation unless the context otherwise requires.
- 1.3 A reference to a term defined in the Agreement has the same meaning when used in this Deed of Variation.

2 VARIATION OF AGREEMENT

The Agreement is varied as follows:

- 2.1 In clause 1.1 (Definitions), the following definition is added after the definition of "Occupation Certificate":

Outstanding Laneway Works means the works to be completed under Item 2.1(h)i, 2.1(h)ii and 2.1(h)iii of Annexure A.

- 2.2 In Item 6 of Schedule 1 (Guarantee Amount), add a new Separate Guarantee item 8 in the Description column, as follows:

8. *Outstanding Laneway Works - \$133,273*

- 2.3 In Item 6 of Schedule 1 (Guarantee Amount), at the beginning of the first line in the Description column, insert the words:

With the exception of item 8 for which the Guarantee Amount is as stated in this table,

- 2.4 In Item 7 of Schedule 1 (Guarantee Amount Due Date), at the beginning of the first line in the Description column, insert the words:

With the exception of the Guarantee for the Outstanding Laneway Works item of the Developer's Works,

- 2.5 In Item 7 of Schedule 1 (Guarantee Amount Due Date), at the end of the last line of the Description column, insert the words:

For the Guarantee for the Outstanding Laneway Works item of the Developer's Works, prior to both the commencement of the Outstanding Laneway Works by the Developer and the return of the Guarantees for the Lane Level Public Plaza and Laneways by the City.

- 2.6 In clause 1 of Schedule 3 (Public Benefits - Overview), add a new sub-item (i) in item 3 of the table that reads as follows:

	<i>Public Benefit</i>	<i>Attributed Value</i>	<i>Due Date</i>	<i>Additional Specifications</i>
(3.)	<i>(Developer's Works)</i>	<i>(i) Outstanding Laneway Works - Attributed Value \$133,273</i> <i>[this amount forms part of the Attributed Value for items (d) and (e) of the Developer's Works]</i>	<i>By 1 January 2027</i>	<i>Additionally, in delivering the Outstanding Laneway Works, the Developer must comply with Annexure F to this document in addition to Annexure A and the Performance Brief. Where there is an inconsistency between Annexure A and the Performance Brief, Annexure A prevails.</i>

- 2.7 In clause 1 of Schedule 3 (Public Benefits - Overview), at the beginning of the first line in the Attributed Value column for item 3 of the table insert the words:

With the exception of sub-item (i) of the Developer's Works for which the Attributed Value is as stated in this table,

- 2.8 In clause 5 of Schedule 3 (Final Design of Developer's Works), insert a new subclause (g) as follows:

(g) The parties agree that the process set out in clause 5(a)-(f) of Schedule 3 in respect of the Outstanding Laneway Works item of the Public Benefits component of the Developer's Works is satisfied by way of the design drawings of that item are as set out in Annexure F and the cost estimate for that item is the Attributed Value set out in item 3(i) of clause 1 of Schedule 3. The Developer acknowledges that the scope of the Outstanding Laneway Works item of the Public Benefits component of the Developer's Works will not change or reduce if the costs required to complete those works are greater than the Attributed Value of that item.

- 2.9 In Item 2.1 of Annexure A (Description of Developer's Works), add a new sub-item (h) as follows:

(h) Outstanding Laneway Works

The Developer must perform the following works to the Lane Level Public Plaza and Laneways by the due date specified in clause 1 of Schedule 3 in order for the Developer's Works to meet the requirements of this document.

The Developer must:

- i. Replace the tree marked on the plan at Annexure F with a 1000L pot size Ulmus parvifolia "Todd" (the "Replacement Tree");*
- ii. Reconstruct the Lane Level Public Plaza/Sai Ying Lane "V" drain to ensure levels reflect the design intent for stormwater flows and do not impact the required levels for adjacent property at 1 Alfred Street, as shown on the plan at Annexure F or as otherwise agreed in writing by the City;*
- iii. Reconstruct the trench grate to the northern end of Ah Toy Lane to ensure correct stormwater flows to the north, as shown on the plan at Annexure F or as otherwise agreed in writing by the City; and*
- iv. Provide detailed plans for the above items (ii) and (iii) of the Outstanding Laneway Works to the City for review and approval prior to the commencement of the works described in the respective item;*
- v. For the period commencing on the date when the Replacement Tree is planted and continuing up to the date that is 12 months from Completion of the Outstanding Laneway Works (or the Completion of the last item of the Outstanding Laneway Works where Completion is achieved for the items in part), the Developer must maintain the Replacement Tree in optimum growing condition and appearance, which must include but is not limited to:*
 - Watering the tree as required to ensure active growth, keeping areas moist but not saturated;*
 - Applying maintenance period fertilizer in accordance with the manufacturer's specifications;*

- *Keeping the planting area free of weeds and undesirable grasses (removing the entire root system and disposing of all weeds appropriately);*
- *Inspecting the tree weekly for disease or insect damage, and treating any affected material immediately;*
- *Removing damaged or diseased growth from the tree;*
- *Immediately replacing the tree if it fails or is damaged, with a replacement tree of equal size and species;*
- *Resetting to proper grades or an upright position where the tree is not in its proper growing position;*
- *Adjusting or replacing stakes and ties as required; and*
- *Pruning the tree in order to repair mechanical damage, improve plant shape, and to form or clear footpaths.*

2.10 In Item 3 of Annexure A (Relevant Plans), add a new item 3.3 as follows:

3.3 Outstanding Laneway Works Plan

The Outstanding Laneway Works Plan titled "Lower Ground Floor - Jointing Plan" for the project "Lendlease Circular Quay Sydney" sheet number T_LD201400 revision 011 and attached at Annexure F.

2.11 Insert a new Annexure F titled "Outstanding Laneway Works Plan" in the form at Schedule 1 to this Deed of Variation.

3 OUTSTANDING LANEWAY WORKS GUARANTEE

3.1 The Developer must ensure that the Guarantee for the Outstanding Laneway Works due under the Agreement, as set out in clause 2.2 of this Deed of Variation, is provided to the City on or prior to the date of this Deed of Variation.

3.2 Nothing in clause 3.1 prevents the Developer from procuring a third party to provide the Guarantee for the Outstanding Laneway Works.

4 NO OTHER CHANGE

The parties confirm that the Agreement will continue in full force and effect as varied by this Deed of Variation. Nothing in this Deed of Variation will be read or construed as implying any form of variation or waiver other than as expressly set out in this Deed of Variation.

5 FURTHER ASSURANCE

Each party must promptly at its own cost do all things (including executing all documents) necessary or desirable to give full effect to this Deed of Variation.

6 LEGAL COSTS

Each party will bear its own legal costs in relation to the preparation and execution, or otherwise arising in connection with, Deed of Variation.

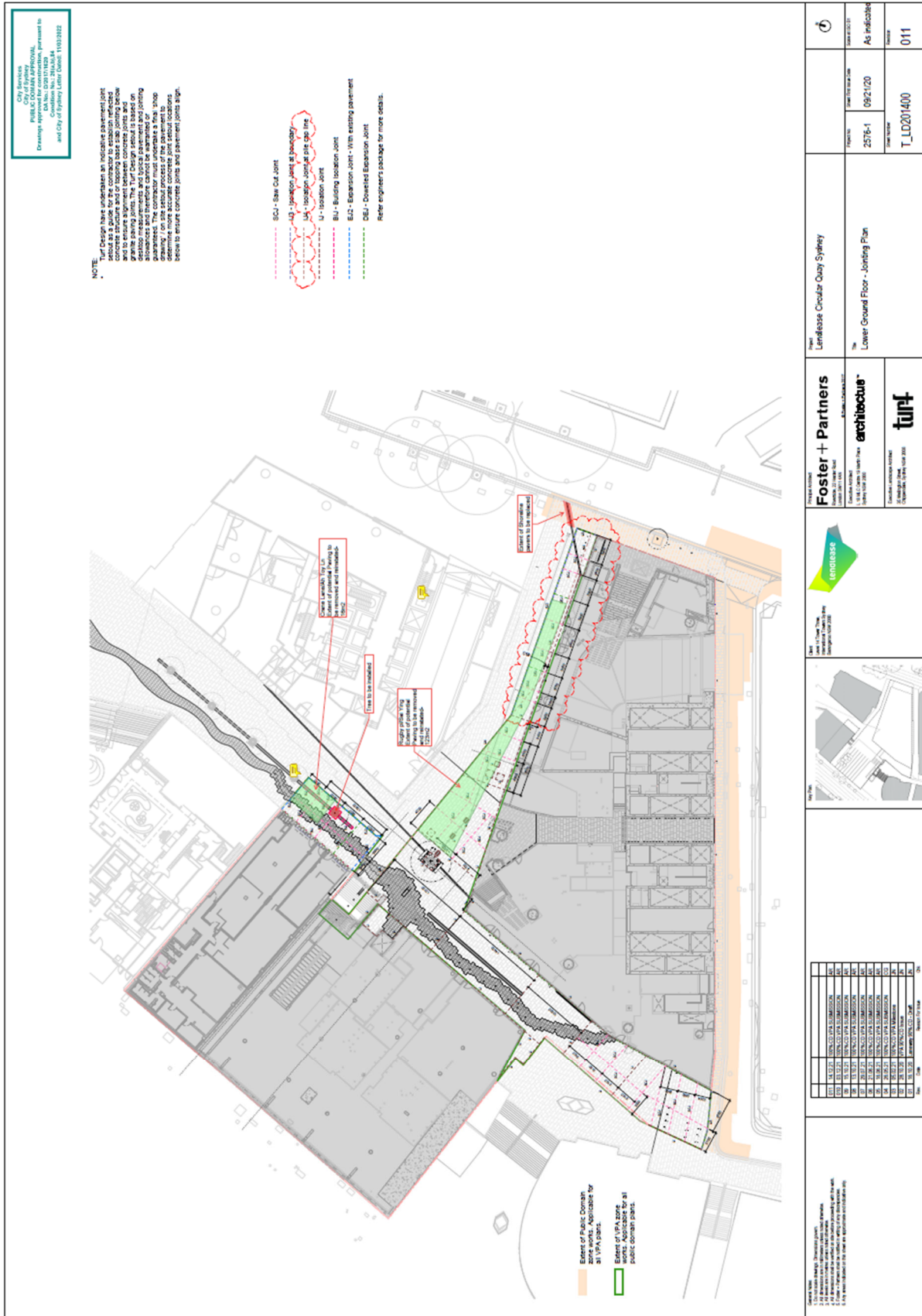
7 GENERAL

7.1 This Deed of Variation contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Deed of Variation are of no effect.

- 7.2 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.
- 7.3 Nothing in this Deed of Variation in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.
- 7.4 The invalidity, illegality or unenforceability of any provisions of this Deed of Variation will not affect the validity or enforceability of any other provisions.
- 7.5 This Deed of Variation may only be varied in writing by the agreement of the parties.
- 7.6 This Deed of Variation is governed by and construed in accordance with the law of the State of New South Wales.
- 7.7 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed of Variation.
- 7.8 The parties acknowledge and agree to this Deed of Variation being executed electronically, and in counterparts, in accordance with the *Electronic Transactions Act 2000* (NSW).

ANNEXURE F

Outstanding Laneway Works Plan



EXECUTION

Executed as a deed on _____ 2024.

Signed for and on behalf of THE COUNCIL OF THE CITY OF SYDNEY ABN 22 636 550 790 by its duly authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Name of witness

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

456 Kent Street Sydney

Director City Planning, Development & Transport

Address of witness

Position of authorised officer

Electronic signature of me, named above, affixed by me on:

Electronic signature of me, named above, affixed by me on:

Date

Date

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Signed by LENDLEASE (CIRCULAR QUAY) PTY LIMITED ABN 18 604 906 685 as TRUSTEE FOR THE LENDLEASE (CIRCULAR QUAY) TRUST ABN 70 131 986 485 in accordance with section 127 of the Corporations Act:

Signature of Director

Signature of Director/Secretary:

Name

Name

Electronic signature of me, named above, affixed by me on:

Electronic signature of me, named above, affixed by me on:

Date

Date