

Planning agreement

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

and

Elegant Dixon Property Pty Ltd ACN 635 215 708

Reference: X081162

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THIS PLANNING AGREEMENT is made on

2021.

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) **Elegant Dixon Property Pty Ltd** ACN 635 215 708 of Unit 1603, 209 Castlereagh Street, SYDNEY NSW 2000 (the **Developer**).

BACKGROUND

- (A) The Developer is the owner of the Land and intends to undertake the Development on the Land.
- (B) The building at 82-84 Dixon Street, Haymarket, also known as the Former Kwong War Chong & Co building, and the interiors and contents of 84 Dixon Street Haymarket, were listed as a heritage item in Schedule 5 of the *Sydney Local Environmental Plan 2012* (NSW) by the City on 15 May 2020.
- (C) The heritage listing recognises its heritage significance and connections with the Chinese migrant community.
- (D) The Developer has offered to enter into this document 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).

Adverse Affectation has the same meaning as in Part 3 of Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2010* (NSW).

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 clause 1 of 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 Personal Information means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Developer).

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.

Completion means the point at which the Developer's Works are complete except for minor defects:

- (a) the existence of which do not prevent the Developer's Works being reasonably capable of being used for their intended purpose;
- (b) which the Developer has grounds for not promptly rectifying; and
- (c) rectification of which will not affect the immediate and convenient use of the Developer's Works for their intended purpose.

Completion Notice means a notice issued by the Developer in accordance with clause 6.1.

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:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) 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
- (c) 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.

Contamination has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

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

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

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Public Benefits or any other matter which prevents the Public Benefits from complying with the terms of this document.

Defects Liability Period means the period of 12 months from the date on which the Developer's Works reach Completion.

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

Developer's Works means those parts of the Public Benefit to be provided in and for the Public Benefits Area described as "Developer's Works" in clause 1 of Schedule 3, and to be delivered by the Developer in accordance with this document.

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 made 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.

Easement means the easement to be registered on title of the Land on the terms set out in Annexure C.

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.

Gross Floor Area has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

GST means the same as in the GST Act.

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

Guarantee means an irrevocable unconditional bank guarantee or documentary performance bond for the Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the City.

Guarantee Amount(s) means a Guarantee or Guarantees for the total amount listed in Item 6 of Schedule 1 of this document.

Guarantee Amount(s) Due Date means the date or milestone by which the Developer must provide the Guarantee Amount to the City, set out at Item 7 of Schedule 1.

Heritage Assets means the interior of the Public Benefits Area, and the items listed in the catalogue of contents commissioned by the City from Hector Abraham Architects dated 5 September 2019 located within the Public Benefits Area or relocated to the Public Benefits Area, the final list of which is to be included in the Plan of Management provided as part of the Public Benefits under this document.

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.

KWC Building means the land in folio identifier 1/66034 containing the former Kwong War Chong & Company building, being 82-84 Dixon Street, Haymarket.

Land means the land in folio identifier 1/66034, and 1/68556 and 1/61997, being 82-84 Dixon Street, Haymarket and 413-415 Sussex Street, Haymarket, respectively.

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

Occupation Certificate has the same meaning as in the Act.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

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

Plan of Management means the plan that meets the requirements set out in Annexure A.

Positive Covenant means the positive covenant to be registered on title of the KWC Building on the terms set out in Annexure B.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and 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 Schedule 3.

Public Benefits Area means the area as shown in Annexure C, being 299.76 square metres and comprising Level 1 and Level 2 of 84 Dixon Street, Haymarket (being the southern half of the KWC Building).

Public Purpose means a use that recognises the heritage significance of the Heritage Assets and its connections with the Chinese migrant communities of Sydney and New South Wales, and that reflects the City's strategic priority for the geographic area set out in the City's Sustainable Sydney 2030 plan, and allows for public access to the Heritage Assets.

Quantity Surveyor means a qualified independent and practising quantity surveyor with at least five years' experience in the assessment of building and construction costs.

Quantity Surveyor's Assessment means the assessment by the Quantity Surveyor of the cost to deliver the Developer's Works.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Standards means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 4 of Schedule 3.

Subdivision of Land has the same meaning as in the Act.

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:

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

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 25E 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 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 **Developer warranties**

- (a) The Developer warrants to the City that, at the date of this document:
 - (i) it is the registered proprietor of the Land;
 - (ii) 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;
 - (iii) 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

(iv) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.

(b) The Developer warrants to the City that, 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**

5.1 **Developer to provide Public Benefits**

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

6. **COMPLETION**

6.1 **Date of Completion**

The Developer must ensure that the Developer's Works reach Completion on or before the date or milestone referred to in clause 1 of Schedule 3 of this document.

6.2 **Developer completion notice**

When, in the reasonable opinion of the Developer, the Developer's Works have reached Completion, the Developer must notify the City's Representative in writing and must include in that notice:

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion;
- (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to assume responsibility for the Developer's Works; and
- (c) at least three sets of the "as built" drawings of the Developer's Works, including one set in electronic format,

(Completion Notice). For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Developer's Works, however the Developer must ensure that Completion is achieved for the Developer's Works before the due date specified in Item 1 of Schedule 3.

6.3 **Inspection by the City**

(a) The City's Representative must inspect the Developer's Works within 5 Business Days of the date that the Completion Notice is received by the City. The City's Representative may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 6.2. Within 10 Business Days of the date of the inspection by the City's Representative, the City must by written notice to the Developer:

- (i) state that Completion has been achieved;

- (ii) state that Completion has not been achieved and, if so, identify the Defects, errors or omissions which, in the opinion of the City's Representative, prevent Completion; or
 - (iii) issue a notice under clause 6.4(a).
- (b) Nothing in this clause 6.3, or any notice issued under this clause 6.3, will:
- (i) reduce or waive in any manner the Developer's responsibility to:
 - (A) deliver the Developer's Works in accordance with this document; or
 - (B) the Developer's responsibility to correct Defects, errors or omissions, whether or not these are identified by the City; or
 - (ii) create any liability for the City in relation to any defective aspect of the Developer's Works.

6.4 **Non-completion of Public Benefits**

- (a) If the Developer makes a request by notice in writing not to complete the Public Benefits (or any part of the Public Benefits):
 - (i) the City may permit the Developer not to complete the Public Benefits (or any part of the Public Benefits) by issuing a notice in writing to the Developer stating that completion of the items identified in that notice is not required to fulfil the Developer's obligations under this document; and
 - (ii) the City may make a claim on the Guarantee in such amount as the City considers necessary to complete the portion of Public Benefit not being delivered by the Developer.
- (b) If the Developer fails to complete the whole of the Public Benefits in the form and to the standards required under the Development Consent or this document then the City may either:
 - (i) complete the Public Benefits itself; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document,

and may recover all costs of and reasonably incidental to that work from the Developer. The City can claim on the Guarantee in order to exercise this right, in which case the provisions of clause 10 will apply. To the extent that the City's costs exceed the amount of the Guarantee, the City can recover this amount from the Developer as a debt due and owing to the City.

- (c) If the City exercises its rights under this clause 6.4 to complete the Public Benefits, the Developer grants the City a licence for the period necessary for the City to access the Public Benefits Area and any area within the Land that is reasonably required to carry out, or procure the carrying out, of the Public Benefits.

7. **INDEMNITY**

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 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).

8. **DEFECTS LIABILITY**

8.1 **Security for Defects Liability Period**

Until the expiry of the relevant Defects Liability Period, the City may retain from the Guarantee an amount equal to 10% of the Attributed Value of the Developer's Works as security for the Developer's performance of its obligations under this clause 8. The Developer must make any necessary arrangements to allow the provision of the Guarantee for the Defects Liability Period in accordance with this clause.

8.2 **Defect in the Public Benefits**

(a) If:

- (i) the Developer is in breach of clause 4.2 of this document; or
- (ii) the City notifies the Developer of a Defect in the Public Benefits within the Defects Liability Period,

then, following written notice from the City, the Developer must promptly correct or replace (at the Developer's expense) the defective elements of the Public Benefits.

(b) If the Developer is unable or unwilling to comply with clause 8.2(a), or fails to rectify the Defect within six months of receiving notice from the City under clause 8.2(a), the City may:

- (i) rectify the Defect itself;
- (ii) make a claim on the Guarantee in accordance with clause 10 for the reasonable costs of the City in rectifying the Defect; and
- (iii) to the extent the costs incurred to rectify the Defect exceeds the Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the City.

(c) If the City requires access to the Public Benefits Area or any area of the Land reasonably required to rectify any Defect, the Developer grants the City and its contractors a licence for such period as is necessary for the City and its contractors to access the Public Benefits Area to carry out, or procure the carrying out, of the rectification works.

9. **REGISTRATION AND CAVEAT**

9.1 **Registration of this document**

(a) The Developer:

- (i) consents to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land;
- (ii) warrants that it has obtained all consents to the registration of this document on the certificate of title to the Land; and
- (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 certificate of 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;
 - (B) providing the production slip number when the Developer produces the certificate of title to the Land at the NSW Land Registry Services; and
 - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
- (iv) The Developer 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.

9.2 **Release of this document**

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 certificate of title to the Land or any other certificates of title that may replace it thereafter, within 30 days after the Defects Liability Period.

10. **ENFORCEMENT**

10.1 **Developer to provide Guarantee**

The Developer must deliver the Guarantee for the Guarantee Amount to the City by the Guarantee Amount Due Date.

10.2 **NOT USED.**

10.3 **Right of City to claim on Guarantee**

- (a) The Developer agrees that the City may make an appropriation from the Guarantee in such amount as the City, acting reasonably, thinks appropriate if:

- (i) the Developer fails to comply with clause 2.2 of Schedule 3 of this document (provision of detailed design drawings and detailed costs estimate);
 - (ii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.4(a)(ii);
 - (iii) an Insolvency Event occurs in respect of the Developer;
 - (iv) the Developer fails to deliver the Public Benefits in accordance with clause 6.4(b);
 - (v) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document;
 - (vi) the detailed designs for the Developer's Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;
 - (vii) the Developer's Works do not reach Completion within 36 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed by the City in writing); or
 - (viii) the City incurs any other expense or liability in exercising its rights and powers under this document.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.2 must be applied only towards:
- (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document; and
 - (ii) carrying out any works required to achieve the Public Benefits.

10.4 **Expenditure by the City**

If the City claims on the Guarantee to Complete the Developer's Works, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or
- (b) may expend more than the Guarantee Amount. If the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer.

10.5 **Top-up and return of Guarantee**

- (a) If the City calls upon the Guarantee in accordance with this clause 10 then the Developer must immediately provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in

accordance with paragraph (b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.

- (b) If:
 - (i) the monies secured by the Guarantee have not been expended;
 - (ii) the City has concurred with Completion in accordance with clause 6.3(a)(i) of this document, taking into account any approved non-completion of Public Benefits approved by clause 6.4(a) of this document; and
 - (iii) the City has been provided with the security for the Defects Liability Period in accordance with clause 8.1,

then the City will promptly return the Guarantee to the Developer following the issue of a notice pursuant to clause 6.3(a)(i) of this document.

- (c) If, following expiry of the Defects Liability Period, the City is satisfied that all defects have been rectified in accordance with clause 8 then the City must promptly return to the Developer the portion of the Guarantee retained by the City as security for the Defects Liability Period.

11. **DISPUTE RESOLUTION**

11.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 11.

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 Developer'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 11; 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 Developer's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Developer's Representative and the City's Representative may meet more than once to resolve a Dispute. The Developer'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 11 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 11 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**

Nothing in this clause 11 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

12. **TAXES AND GST**

12.1 **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 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 Developer 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. **DEALINGS**

13.1 **Dealing by the City**

- (a) The City may Deal with its interest in this document without the consent of the Developer 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 Developer, such consent not to be unreasonably withheld or delayed.

13.2 **Dealing by the Developer**

- (a) Prior to registration of this document in accordance with clause 9, 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 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 9:
 - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land;
 - (ii) the Developer may register a plan of strata or stratum subdivision, and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan or only on the stratum lot that incorporates the Heritage Assets upon registration of the stratum plan; and
 - (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
 - (A) the prior written consent of the City; and
 - (B) where required by the City, the City, 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 Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.

14. **TERMINATION**

- (a) The City may terminate this document by notice in writing to the Developer if the Development Consent lapses or is surrendered by the Developer.
- (b) If the City terminates this document 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 the each party may suffer as a result of the termination of this document;

- (iii) the City will, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land or any other certificates of title that may replace it thereafter.

15. **CONFIDENTIALITY AND DISCLOSURES**

15.1 **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 15.2 or 15.3.

15.2 **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 15.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 15.2(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 15.2(b)(i).

15.3 **Disclosures required by law**

- (a) Subject to clause 15.3(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 15.3(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.

15.4 **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.

15.5 **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.

15.6 **Media releases**

The Developer 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.

16. **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 and the Developer's Representative, or as the person notifies the sender in writing from time to time.

17. GENERAL

17.1 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.

17.2 Access to information

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

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer 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 from the City to enable the Developer to deliver the Public Benefits.

17.3 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.

17.4 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.

17.5 **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.

17.6 **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.

17.7 **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.

17.8 **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.

17.9 **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.

17.10 **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.

17.11 **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.

17.12 **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.

17.13 **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.

17.14 **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.

17.15 **Electronic execution**

The parties acknowledge and agree to this document being executed electronically, and in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	NOT USED	
2.	Development	Demolition of existing building at 413-415 Sussex Street and construction of a 17 storey mixed use development with two basement levels and a communal rooftop garden. The proposal includes 306 student boarding rooms and four levels of retail provision together with conservation works to the existing buildings at 82-84 Dixon Street.
3.	City's Representative	Name: Director, Planning, Development and Transport Address: Level 1, 456 Kent Street, Sydney NSW 2000 Email: applications@cityofsydney.nsw.gov.au
4.	Developer's Representative	Name: Zirong Zhao Address: Suite 102, 209 Castlereagh Street, Sydney NSW 2000 Email: wing.zhao@elegantprivate.com
5.	Development Application	D/2020/1386
6.	Guarantee Amount	A total amount of \$378,716.00.
7.	Guarantee Amount Due Date	Prior to the issue of the first Construction Certificate for the Development.

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.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	The Land as defined in clause 1.1.
3.	<p>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)</p>	The Development as described in clause 2.1.
4.	<p>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)</p>	Schedule 3.
5.	<p>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>	<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 11
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 10
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 9
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Nil
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Nil
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Provision of all Public Benefits outlined in Schedule 3
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) 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.	Prepare a Plan of Management including the list of Heritage Assets	Nil	Prior to the issue of the first Occupation Certificate for the Development	Annexure A
2.	Implement the Plan of Management	Nil	Prior to the issue of the first Occupation Certificate for the Development	Activities required to give effect to the approved Plan of Management
3.	Developer's Works	\$378,716.00	Prior to the issue of the first Occupation Certificate for the Development	Works required to enable the Public Benefits Area to be used for a Public Purpose in accordance with the Plan of Management, including the provision of public access, and access for people with disability, to the Public Benefits Area.
4.	Create and register the Positive Covenant on the title of the KWC Building	Nil	Registration of the Positive Covenant must occur on or before the date of issue of the first Occupation Certificate for the Development	Terms as set out in Annexure B. Where the Developer registers a plan of stratum subdivision for the Land, the Positive Covenant need only be registered on the stratum lot that incorporates the Heritage Assets.

	Public Benefit	Attributed Value	Due date	Additional specifications
5.	Create and register the Easement on the title of the Land	Nil	Registration of the Easement must occur on or before the date of issue of the first Occupation Certificate for the Development	Terms as set out in Annexure C.

2. **FINAL DESIGN OF THE DEVELOPER'S WORKS**

2.1 **Scope of Developer's Works**

As at the date of this document, the nature and extent of the required Developer's Works is set out in item 3 of clause 1 of Schedule 3. The parties agree that further design refinement of the Developer's Works may be necessary, having regard to:

- (a) the extent to which the design of the Developer's Works has been approved by the City;
- (b) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document;
- (c) the extent of any refinement of the design of the Developer's Works permitted by this clause 2 of Schedule 3;
- (d) any modification to the Development Consent made and approved under section 4.55 of the Act or any other development consent granted that relates to the Developer's Works; and
- (e) the reasonable requirements of the City, including in regard to the Standards.

2.2 **Final design of Developer's Works**

- (a) Within 3 months of the date of this document (or a later time approved by the City in writing) but prior to the issue of the first Construction Certificate for the Development, the Developer must submit to the City's Representative for approval:
 - (i) detailed design drawings of the Developer's Works that reflect the plans and specifications set out in item 3 of clause 1 of Schedule 3; and
 - (ii) a detailed costs estimate (certified by a Quantity Surveyor) setting out the estimated cost of the Developer's Works.
- (b) Within 30 Business Days after the City's Representative has received the detailed design drawings and detailed costs estimate, the City will inform the Developer in writing as to whether the detailed design drawings and costs estimate are approved. If the detailed design drawings or costs

estimate are not approved, the City will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the required information, following which the process outlined in this paragraph (b) will apply again.

- (c) Regarding the costs estimate, the Developer agrees that the City may:
 - (i) reject items included within the Quantity Surveyor's Assessment which are not directly related to the Developer's Works;
 - (ii) require substantiation for the costs of items where the amount estimated is considered by the City to be excessive;
 - (iii) require an adjustment to the costs estimate to reflect a variation to the design required under this clause 2.2 of Schedule 3.
- (d) If the Developer:
 - (i) fails to prepare the detailed design drawings or detailed costs estimate; or
 - (ii) does not provide further information or modify the detailed design drawings or detailed costs estimate,

in accordance with this clause 2.2 of Schedule 3, then the City may exercise its rights under clause 10 of this document in order to carry out the Developer's Works itself at the cost of the Developer.

- (e) The Developer agrees that the value of the Developer's Works may be adjusted following completion of the process set out in this clause 2.2 of Schedule 3. The Developer acknowledges that the scope of the Developer's Works will not change or reduce if the costs required to complete those works is greater than the amount estimated at the date of this document.

3. CONSTRUCTION OF DEVELOPER'S WORKS

3.1 Insurance

- (a) From commencement of the Developer's Works until expiration of the Defects Liability Period, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:
 - (i) worker's compensation insurance or registrations as required by Laws;
 - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;

- (iii) construction works insurance in relation to the Developer's Works; and
 - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the City:
- (i) prior to commencing construction of the Developer's Works; and
 - (ii) promptly following a written request by the City, provided that such a request is not made more than twice in any 12 month period.

3.2 **Approvals and consents**

The Developer must, at its cost, obtain all relevant approvals and consents for the Developer's Works, whether from the City or from any other relevant Government Agency, including any necessary road opening permits. Before commencing the Developer's Works, the Developer must give to the City copies of all approvals and consents for the Developer's Works, other than the Development Consent.

3.3 **Construction work**

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works, including any approval given by the City under this document;
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use;
- (c) ensure that the Developer's Works are Complete by the due date specified in clause 1 of Schedule 3 and promptly after becoming aware advise the City's Representative of any significant delays in completing the Developer's Works or delays that may impact the delivery of the Public Benefits by the due date specified in Item 1 of Schedule 3; and
- (d) comply with all reasonable directions of the City in respect to construction of the Developer's Works.

3.4 **Inspections by the City**

The City, as a party to this document and not in its role as a Government Agency, may:

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's Representative of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of an inspection.

Any failure by the City to identify a Defect, error or omission will not be construed as amounting to an acceptance by the City of the Defect, error or omission.

4. **STANDARDS**

The following list of Standards are included for information purposes only, and as a guide to the relevant standards for the general nature of the work identified as Developer's Works in this document. The City makes no representation or warranty as to the currency of the standards identified, or their application on the final design of the Developer's Works. The Developer must make its own enquiries regarding whether any standard has been replaced or supplemented. In the event that an Australian Standard prescribed a different level of material, finish, work or workmanship than those contained in a City standard, then the higher of the two standards will apply. If there is a conflict between City standards then the Developer must request the City nominate the correct and applicable City standard. The City's decision as to the applicable standard is final.

City Standards (All Works)

- City of Sydney Contaminated Lands DCP 2004
- Sydney Street Code 2013
- Sydney Lights Code 2013
- City of Sydney Access Policy
- Sydney Street Technical Specification and Drawings
- City of Sydney Street Tree Master Plan 2011

5. **POSITIVE COVENANT AND EASEMENT**

- (a) The Developer will prepare and issue the Positive Covenant incorporating the terms in Annexure B, and the Easement incorporating the terms in Annexure C, for the City's review and approval no later than three months prior to the first Occupation Certificate for the Development.
- (b) Once approved, following execution of the Positive Covenant and the Easement by the Developer and all parties required for registration of the Instrument, the Developer will deliver the Positive Covenant and the Easement to the City for execution.
- (c) The City must execute and deliver the Positive Covenant and the Easement to the Developer as soon as reasonably practicable following receipt of the Positive Covenant and the Easement under clause 5(b).
- (d) The Developer must register the Positive Covenant and the Easement before the issue of the first Occupation Certificate for the Development.

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 witness

Electronic signature of:

Signature of officer

Electronic signature of:

Name

Name of officer

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

456 Kent Street, Sydney NSW 2000

Address of witness

Inserted by me on:

Position of officer

Inserted 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).

EXECUTED by **ELEGANT DIXON
PROPERTY PTY LTD (ACN 635 215
708)** in accordance with s127(1) of the
Corporations Act 2001 (Cth):

Sole director/secretary

Electronic signature of:

Name

Inserted by me on:

Date

ANNEXURE A – PLAN OF MANAGEMENT

Scope

Prepare a Plan of Management that provides for:

1. The ongoing use of the Public Benefits Area for a Public Purpose,
2. Display of the Heritage Assets, and
3. Management and maintenance of the Heritage Assets.

Mandatory Inclusions

The Plan of Management must include:

- The objectives of the Plan of Management.
- A list, and details, of appropriate uses for the Public Benefits Area for a Public Purpose which may include:
 - A Chinese Australian museum,
 - Community meeting rooms,
 - A library with exhibitions for the Chinese community,
 - Office space for lease for community not-for-profit groups with a focus on community groups associated with Chinese cultural activities and the broader Haymarket area, and/or
 - Entertainment space for events and activities associated with Chinese cultural communities and priorities.
- The catalogue of contents commissioned by the City from Hector Abraham Architects dated 5 September 2019, as an annex.
- The heritage assessment commissioned by the City from Hector Abraham Architects dated 15 July 2019, as an annex.
- The list of all items that comprise the Heritage Assets, being those items listed in the catalogue of contents commissioned by the City from Hector Abraham Architects dated 5 September 2019 that are located in the Public Benefits Area, and those items that were or are to be relocated to the Public Benefits Area.
- Details as to how public access to the Heritage Assets and the Public Benefits Area will be provided on an ongoing basis.
- Details as to how the Plan of Management will be implemented, including how the ongoing use, management and maintenance of the Heritage Assets and the Public Benefits Area will be achieved and funded.

- The governance structure that will be used to manage the Public Benefits Area to ensure it is operated in accordance with the Plan of Management.
- The organisation or organisations (by name or type) identified as suitable to operate the Public Benefits Area to ensure that the Public Benefits Area is used for a Public Purpose in accordance with the Plan of Management.
- Details of any costs or fees to be charged for access to view the Heritage Assets, or use of the Public Benefits Area, including benchmarking against the costs or fees charged to access or use similar or equivalent venues or institutions (e.g. Sydney Living Museums), and how the costs or fees will be reviewed and revised.
- Details of the public consultation undertaken in preparation of the Plan of Management including parties that participated in the consultation, matters raised and/or arising from the consultation, and how each matter has been addressed.
- Details of the process to enable any future revision to the Plan of Management.
- Grading of significance of spaces and the fabric, including walls, doors and windows, ceilings, floors, stairs, movable elements etc prepared by an appropriately qualified heritage consultant in accordance with the Heritage Office guideline 'Assessing Heritage Significance' and James Semple Kerr's 'The Conservation Plan' with reference to the contents catalogue and heritage assessment prepared by Hector Abraham Architects in 2019.
- Details of the possible internal changes to the Public Benefits Area and any associated means of access.
- Details of remedial works to be undertaken to give effect to the Plan of Management.

Minimum Public Purpose Measures

In determining the appropriate uses for the Public Benefits Area as part of the Plan of Management, the minimum requirements to achieve a Public Purpose are:

- The Heritage Assets will be made available for viewing by the public no less than four weeks per calendar year to coincide with events including NSW History Week, Sydney Open, Lunar New Year and the Australian Heritage Festival.
- Any cost or fee charged for access to view the Heritage Assets, or use of the Public Benefits Area must be no greater than the cost or fee charged to access or use similar or equivalent venues or institutions (e.g. Sydney Living Museums).

Consultation Process

In preparing the Plan of Management, the Developer must consult with the City, the Museum of Chinese in Australia, the Chinese Australian Historical Society, the National Trust of Australia (NSW) and Sydney Living Museums.

Consultation must include, but is not limited to, which items listed in the catalogue of contents commissioned by the City from Hector Abraham Architects dated 5 September 2019 that are not currently located within the Public Benefits Area should be relocated to the Public Benefits Area and form part of the Heritage Assets.

Approval Process

The Plan of Management must be prepared to the City's satisfaction, and is subject to review and approval by the City prior to finalisation in accordance with the following process:

- Within 12 months of the date of this document (or a later time approved by the City in writing) but prior to the issue of the first Occupation Certificate for the Development, the Developer must submit the Plan of Management to the City's Representative for approval.
- Within 30 Business Days after the City's Representative has received the Plan of Management, the City will inform the Developer in writing as to whether the Plan of Management is approved. If the Plan of Management is not approved, the City will inform the Developer in writing of what further information or modifications are required (including any required changes to the list of items that comprise the Heritage Assets) and the Developer will have a further 15 Business Days to re-submit a revised Plan of Management, following which the process outlined in this paragraph will apply again.
- If the Developer fails to submit the Plan of Management, or a revised Plan of Management addressing the further information or modifications required by the City, then the City may exercise its rights under clause 10 of this document in order to carry out the work itself at the cost of the Developer.
- The City does not assume or owe any duty of care to the Developer in reviewing or approving the Plan of Management submitted to it under this section or for any errors, omissions or non-compliance with this document.
- No participation by the City in the development of, the review of, the comment on, or the approval of the Plan of Management submitted by the Developer will lessen or otherwise affect the Developer's obligations under this document.

ANNEXURE B – TERMS OF POSITIVE COVENANT

1. DEFINITIONS

Council means The Council of the City of Sydney (ABN 22 636 550 790).

Development means the development on the Land approved in the Development Consent.

Development Consent means the consent of the Council number D/2020/1386 dated 22 July 2021 as amended or varied from time to time.

Heritage Area and Assets means the interior of levels 1 and 2 of the KWC Building and the contents therein which are listed as the heritage items in the POM.

KWC Building means the building on the Land known as the former Kwong War Chong & Company building.

Land means the land contained within Certificate of Title Folio Identifier 1/66034 and known as 82-84 Dixon Street Haymarket.

Owner means the registered proprietor of the Land.

POM means the Plan of Management put into place as a result of condition three (3) of the Development Consent, prepared by [INSERT] dated [INSERT], approved by Council on [INSERT], attached at [INSERT], as amended or varied from time to time.

2. COVENANTS

The Owner must:

- (a) provide public access to the Heritage Area and Assets and in accordance with the POM;
- (b) manage and operate the Heritage Area and Assets in accordance with the POM;
- (c) comply with the POM at all times;
- (d) maintain the POM including undertaking regular reviews to ensure it remains current and relevant to the Heritage Area and Assets;
- (e) comply with Council's reasonable directions and requirements in relation to the POM;
- (f) maintain the Heritage Area and Assets, and any other parts of the Building or Land that provide access to the Heritage Area and Assets in a manner necessary to give effect to or comply with the POM; and
- (g) undertake works to the Heritage Area and Assets, and the Building, as necessary to give effect to or comply with the POM; and
- (h) provide the Council, or its authorised representatives, access to the Heritage Area and Assets in order to verify the Owner's compliance with the POM and this positive covenant, and the Council agrees to provide reasonable notice prior to any such access.

3. RELEASE OR VARIATION

This positive covenant is for the benefit of Council and may only be released or varied with the prior written consent of Council.

4. GENERAL

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.

ANNEXURE C – TERMS OF EASEMENT

TERMS OF EASEMENTS AND ASSOCIATED POSITIVE COVENANT TO BE CREATED PURSUANT TO SECTIONS 88B OF THE CONVEYANCING ACT 1919

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for public access	<p>Lot 1 in DP 61997 and Lot 1 in DP 68556 (together being 413-415 Sussex St Haymarket)</p> <p>The lot containing the ground floor of 82-84 Dixon St Haymarket following strata/stratum subdivision of Lot 1 in DP 66034 [title details to be inserted once known]</p>	<p>The Council of the City of Sydney</p> <p>The lot containing the first and second floors of 82-84 Dixon St Haymarket following strata/stratum subdivision of Lot 1 in DP 66034 [title details to be inserted once known]</p>
2	Positive Covenant (Public Access)	<p>Lot 1 in DP 61997 and Lot 1 in DP 68556 (together being 413-415 Sussex St Haymarket)</p> <p>The lot containing the ground floor of 82-84 Dixon St Haymarket following strata/stratum subdivision of Lot 1 in DP 66034 [title details to be inserted once known]</p>	<p>The Council of the City of Sydney</p> <p>82-84 Dixon St Haymarket following strata/stratum subdivision of Lot 1 in DP 66034 [title details to be inserted once known]</p>

Part 2 (Terms)

1. INTERPRETATION

1.1 Definitions

These meanings apply unless the contrary intention appears:

Act means the *Conveyancing Act 1919* (NSW).

Authorised User means every person authorised by the City or the Grantee for the purposes of the Easement created by this Instrument. Subject to the terms of the Easement, an Authorised User includes the employees, agents, servants, contractors, workers, licensees and invitees of the City or the Owner of the Lots Benefited.

Council means The Council of the City Sydney.

Easement means the easements and positive covenants in this Instrument and includes the conditions in relation to that Easement.

Easement Site means in relation to an easement and positive covenant in this Instrument the site of an easement and positive covenant identified on the Plan.

Grantee means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Benefited.

Grantor means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Burdened.

Instrument means this instrument registered with the Plan pursuant to section 88B of the Act.

Lot Benefited means a lot referred to in Part 1 of this Instrument as being land benefited by an Easement created by this Instrument.

Lot Burdened means a lot referred to in Part 1 of this Instrument as being land burdened by an Easement created by this Instrument.

Plan means the plan registered together with this Instrument.

1.2 **Interpretation**

In this Instrument:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (c) a reference to anything (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them;
- (d) specifying anything in this agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (e) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (f) the expression "Grantor" includes the Grantor, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment; and
- (g) the expression "Grantee" includes the Grantee, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment.

1.3 **Headings**

Headings do not affect the interpretation of this Instrument.

1.4 **Positive covenants and maintenance requirements**

A requirement in an Easement which requires a Grantee or Grantor to maintain or repair an

Easement Site or anything in an Easement Site is a positive covenant according to section 88BA of the Act.

1.5 **Severability**

If a provision of an Easement is void, unenforceable or illegal, then that provision is severed from that Easement and the remaining provisions of that Easement have full force and effect.

2. **TERMS OF EASEMENT FOR PUBLIC ACCESS NUMBERED ONE IN THE PLAN**

2.1 **Grant**

The Grantor grants to Council, the Grantee, and Authorised Users full and free right to go, pass and repossess over the Easement Site at all times:

- (a) on foot; and/or
- (b) with wheelchairs or other disabled access aids; and/or
- (c) without vehicles; and/or
- (d) without animals except for guide dogs, hearing dogs or other animals trained to assist persons with a disability,

for all lawful purposes.

2.2 **Purpose of Easement**

Council, the Grantee and the Grantor acknowledge that the Easement is being provided for the purpose of providing reasonable access over the Easement Site to any member of the public in accordance with and subject to the provisions of this Easement.

2.3 **Care and control**

The Grantor acknowledges and agrees that:

- (a) the Grantor will have the care and control of the Easement Site; and
- (b) Council, the Grantee and Authorised Users will not be liable for anything that occurs on the Easement Site.

2.4 **Inspection**

The Grantor must permit Council to enter the Easement Site with any equipment reasonably necessary to inspect the Easement Site for the purposes of ensuring that the Grantor is complying with its obligations under the Positive Covenant numbered 2 in the Plan.

2.5 **Person empowered to release or vary or modify the Easement**

This Easement may only be released, varied or modified by Council.

3. **TERMS OF POSITIVE COVENANT (PUBLIC ACCESS) NUMBERED TWO IN THE PLAN**

3.1 **Maintenance of Easement Site**

At all times, the Grantor must:

- (a) maintain the Easement Site (including any lighting, elevators or escalators) in good condition and state of repair such that the Easement Site can be used in the manner set out in clause 2 of this Instrument;
- (b) not permit the Easement Site to become unsafe; and
- (c) keep the Easement Site clean and free from rubbish.

3.2 **Public Liability Insurance**

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities to Council or to any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million.
- (b) The policy referred to in clause 2.1 must:
 - (i) note Council as an interested party; and
 - (ii) be taken out and maintained with reputable insurers who either:
 - A. have their principal place of business in Australia; or
 - B. are licensed by the Australian Prudential Regulation Authority to provide insurance in Australia.
- (c) The Grantor must provide a copy of the certificate of currency for the policy referred to in clause 2.1 where requested by Council.


3.3 **Indemnity**

The Grantor indemnifies Council and the Grantee against any claims or damages arising from the use of the Easement Site by Council, the Grantee, or any Authorised Users under Easement for Public Access numbered one on the Plan.

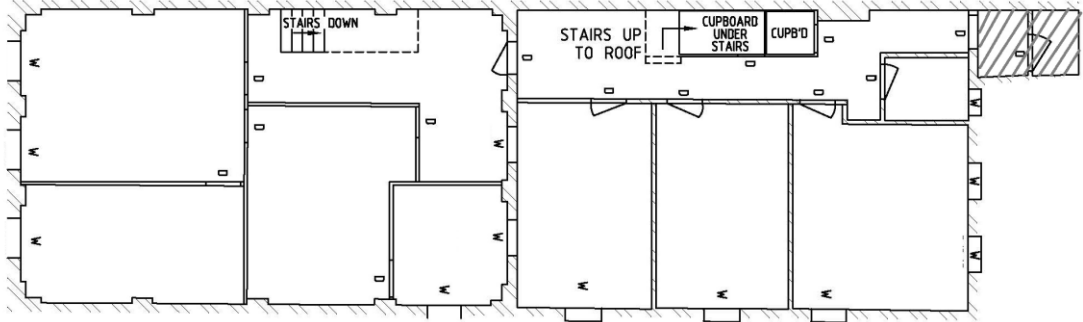
3.4 **Person empowered to release, vary or modify the Positive Covenant**

This Positive Covenant may only be released, varied or modified by Council.

ANNEXURE D- PLAN OF PUBLIC BENEFITS AREA

 Excluded from the Public Benefits Area

SECOND FLOOR
No. 84



FIRST FLOOR
No. 84

