

Planning Agreement

(Heritage Floor Space)

The Council of the City of Sydney

and

The Trust Company (Australia) Limited (ACN 000 000 993) as trustee for Pitt Property Trust (ABN 97 819 139 836)

For: 46-54 Pitt Street, Sydney NSW 2000



Sydney2030

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THIS PLANNING AGREEMENT is made on

2020.

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) **The Trust Company (Australia) Limited (ACN 000 000 993) as trustee for Pitt Property Trust (ABN 97 819 139 836)** of Level 18, 123 Pitt Street, Sydney NSW 2000 (the **Landowner**).

BACKGROUND

- (A) The Landowner owns the Land.
- (B) The Landowner intends to undertake the Development on the Land.
- (C) The Landowner has offered to enter into this document with the City to provide the Public Benefit 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)*.

Allocated HFS means Heritage Floor Space which has been allocated and recorded in the HFS Register for use at the Development.

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.

Call Date means the date from which the City can call on the Security, set out in Item 14 of Schedule 1.

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

Commencement Date means the date this document commences in accordance with clause 3.1.

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;
- (b) information that may be made available or obtained directly or indirectly, and before, on or after the date of this document; and
- (c) information excluding that which:
 - (i) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
 - (ii) 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
 - (iii) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

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

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

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

Development Consent means the development consent D/2019/1385 granted on 27 April 2020 for the Development identified in Item 5 of Schedule 1 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.

Due Date means the date by which the Landowner must procure the Heritage Floor Space, set out in Item 13 of Schedule 1.

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 Act;

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

General Register of Deeds means the register maintained by New South Wales Land Registry Services under the *Conveyancing Act 1919* (NSW) and so titled.

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 SLEP 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).

Heritage Conservation Fund means the fund established by the City for the purpose of heritage conservation works.

Heritage Floor Space or **HFS** means transferable floor space awarded to heritage listed buildings in accordance with clause 6.10 of the SLEP.

HFS Deed means the binding written agreement between the Landowner and the relevant HFS Owner(s) for the purchase of HFS for valuable consideration and which must, as a minimum, document:

- (a) the quantity of HFS to be transferred to the Landowner; and
- (b) the price paid by the Landowner for the HFS, to be agreed between the Landowner and the HFS Owner(s).

HFS Owner means a person awarded HFS on the HFS Register.

HFS Register means the register maintained by the City for the purpose of clause 6.10 of the SLEP.

HFS Scheme means the *Alternative Heritage Floor Space Allocation Scheme* dated March 2016 and published by the City, as amended from time to time.

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;
 - (ii) being unable to pay its debts or otherwise insolvent.
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction, unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

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

Landowner means the Landowner.

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

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

Occupation Certificate means the first occupation certificate issued in respect of the Development.

Outstanding HFS means the amount of HFS required under the conditions of the Development Consent and remaining to be allocated to the Development at the date of this document, as set out at Item 9 of Schedule 1 of this document.

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

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

Public Benefit means the provision of benefit to the community by the Landowner either by way of allocation of HFS in the manner set out in clause 5 or by way of

a monetary contribution to the Heritage Conservation Fund in the manner set out in clause 8.

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

Remaining HFS means the Outstanding HFS, less any HFS which has been allocated and recorded in the HFS Register for use at the Development, after the date of this document.

Required HFS means the HFS required pursuant to the Development Consent as set out in Item 8 of Schedule 1 to this document.

Security means a security deposit payable by EFT for the Security Amount to be provided to the City by the Landowner.

Security Amount means the security amount or amounts for the total amount set out in Item 11 of Schedule 1 of this document.

SLEP means the *Sydney Local Environmental Plan 2012*.

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.

Transaction Fee means the fee payable to the Council of the City of Sydney for the cost of registering the transfer of HFS on the HFS Register, as determined by the Council of the City of Sydney from time to time as part of its published Fees and Charges.

Unit Rate means the unit rate of HFS as set out in Item 10 of Schedule 1.

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 Benefit to be made by Landowner**

Clause 5 and Schedule 1 set out the details of the:

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

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

- (a) 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.
- (b) For the avoidance of doubt, if the City imposes a condition of consent on a Development Consent for the Development under section 7.11 of the Act requiring payment of a contribution authorised by a contributions plan

approved under section 61 of the *City of Sydney Act 1988 (NSW)*, no further contributions pursuant to section 7.11 or section 7.12 of the Act are payable in relation to the Development.

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 commences on the date that this document is signed by all parties.

4. **WARRANTIES**

4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting

creditors' rights generally), subject to any necessary stamping or registration;

- (e) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) **(no controller)** no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 **Landowner warranties**

- (a) The Landowner warrants to the City that, at the date of this document:
 - (i) it is legally entitled to obtain all consents and approvals that are required by this document and to do all things necessary to give effect to this document;
 - (ii) all work performed on behalf of the Landowner under this document will be performed with due care and skill;
 - (iii) it is the registered proprietor of the Land; and
 - (iv) it is not aware of any matter which may materially affect the Landowner's ability to perform its obligations under this document.
- (b) The Landowner warrants to the City that, prior to commencing delivery of the Public Benefit it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

5. **PUBLIC BENEFIT**

5.1 **Landowner to provide Public Benefit**

- (a) The Landowner must use all reasonable endeavours to procure the Required HFS on or before the Due Date.
- (b) Without limiting the Landowner's obligations under clause 5.1(a), in complying with clause 5.1(a) the Landowner must:
 - (i) make genuine and ongoing efforts to procure the Required HFS from HFS Owners; and
 - (ii) where such negotiations in accordance with clause 5.1(b)(i) are successful:
 - (A) enter into a HFS Deed with the HFS Owner; and
 - (B) procure, at its own cost (if necessary), the stamping and registration of the HFS Deed in the General Register of Deeds.
- (c) Within 30 days of registration of the HFS Deed in accordance with clause 5.1(b), the Landowner must provide to the City:
 - (i) a copy of the stamped, registered HFS Deed; and

- (ii) the Transaction Fee.
- (d) If the Landowner has complied with its obligations under clauses 5.1(a) to 5.1(c), the City will update the HFS Register to include all or part of the Required HFS as Allocated HFS for the purposes of the Development.

6. **INDEMNITY**

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

7. **REGISTRATION**

7.1 **Registration of this document**

Not used.

8. **ENFORCEMENT**

8.1 **Landowner to provide Security**

- (a) The Landowner has agreed to provide security to the City for the performance of the Landowner's obligations under this document by providing the Security to the City.
- (b) The Landowner must provide the Security to the City on the date that the Landowner signs this document.
- (c) The City is entitled to retain the Security from the date of this document until the Landowner complies with its obligations under clause 5.1 or the City claims on the Security in accordance with clause 8.2.
- (d) The Landowner expressly acknowledges and agrees that the City may make an appropriation from the Security in such amount as the City (acting reasonably) thinks appropriate if the City, in exercising its powers under this document consequent upon a breach by the Landowner of its obligation under this document, incurs expense or liability.

8.2 **Right of City to claim on Security**

- (a) The Landowner agrees that:
 - (i) the City may make an appropriation from the Security in such amount as set out in clause 8.2(a)(ii) if:
 - (A) the Landowner fails to procure all or part of the Required HFS under the Development Consent by the Due Date in accordance with clause 5.1; or
 - (B) all HFS acquired by the Due Date has not been recorded in the HFS Register for use at the Development by the Call Date.

- (ii) the amount of the Security which may be appropriated by the City in accordance with clause 8.2(a) is to be calculated in accordance with the following formula, and clause 8.2(a)(iii):

$$X = W(Y - Z)$$

Where:

X is an amount in \$;

W is the Unit Rate;

Y is the Required HFS; and

Z is the amount of HFS (in square metres) allocated to the Development at the Due Date and includes any HFS allocated after the Commencement Date in accordance with clause 5.1.

- (iii) if the calculation under clause 8.2(a)(ii) results in X being less than the Security Amount, then the difference between X and the Security Amount must be remitted to the Landowner within 30 Business Days of the City calling upon the Security subject to clause 8.1(c).
- (b) The Landowner agrees that the City may make any further appropriation it deems reasonably necessary to cover any costs and expenses incurred by the City in rectifying any breach by the Landowner of its obligations under this document.
- (c) Any amount appropriated by the City under this clause 8.2 must be applied by the City towards:
 - (i) the costs and expenses incurred by the City in rectifying any breach by the Landowner of its obligations under this document;
 - (ii) the Heritage Conservation Fund; and/or
 - (iii) other matters as set out in the HFS Scheme as adopted by the City from time to time.
- (d) If the City makes an appropriation from the Security for an amount being the unit rate multiplied by the Required HFS less the amount of Allocated HFS (if any), in accordance with clause 8.2(a), then the parties acknowledge that the Landowner is deemed to have complied with its obligations under clause 5.1 of this document, as well as condition 4(c) of the Development Consent.

8.3 Replacement Security

- (a) The Landowner may, by notice in writing, request that the City return the Security if:
 - (i) the Landowner has secured part of the Outstanding HFS;

- (ii) the whole of the monies secured by the Security provided to the City in accordance with clause 8.1 has not been expended by the City in accordance with clause 8.2; and
 - (iii) the Landowner provides the City with a replacement security with a face value to be calculated by multiplying the Remaining HFS as at the date of the notice served under this clause by the Unit Rate.
- (b) On provision of a replacement security, the parties agree that the replacement security will become the Security for the purpose of this document.

8.4 **Return of Security**

- (a) If:
- (i) the Landowner complies with its obligations under clauses 5.1(a) to 5.1(c), the City will return the Security to the Landowner within 5 Business Days of receipt of a copy of the HFS Register, updated in accordance with clause 5.1(d) less any costs and expenses incurred by the City in rectifying any breach by the Landowner of its obligations under this document;
 - (ii) the Landowner partially complies or fails to comply with its obligations under clause 5.1, clause 8.2 will apply.

8.5 **No Trust**

Nothing in this document creates any form of trust arrangement or fiduciary duty between the City and the Landowner. Following receipt of the Security Amount, the City is not required to separately account for the Security Amount, report to the Landowner regarding expenditure of the Security Amount or comply with any request by the Landowner to trace the Security Amount.

9. **DISPUTE RESOLUTION**

9.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 9.

9.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Landowner's Representative or the City's Representative for resolution. The Dispute Notice must:
- (i) be in writing;
 - (ii) state that it is given pursuant to this clause 9; 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 Landowner's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Landowner's Representative and the City's Representative may meet more than once to resolve a Dispute. The Landowner's Representative and the City's Representative may meet in person, via telephone, videoconference or any other agreed means of instantaneous communication to effect the meeting.

9.3 **Not use information**

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 9 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 9 for any purpose other than in an attempt to settle the Dispute.

9.4 **Condition precedent to litigation**

Subject to clause 9.5, 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.

9.5 **Summary or urgent relief**

Nothing in this clause 9 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

10. TAXES AND GST

10.1 Responsibility for Taxes

- (a) The Landowner 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 Benefit.
- (b) The Landowner 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 Landowner is responsible under clause 10.1(a).

10.2 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.

10.3 Supply subject to GST

To the extent that clause 10.2 does not apply to a supply made under this document, this clause 10.3 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 10.3(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 10.3(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 Landowner will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 10.3.

- (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.

11. **DEALINGS**

11.1 **Dealing by the City**

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

11.2 **Dealing by the Landowner**

- (a) On and from the Commencement Date:
 - (i) the Landowner may Deal with this document without the consent of the City only:
 - (A) if such a Dealing is required to comply with a condition of the Development Consent, provided that the Dealing is in favour of the Landowner or a related entity of the Landowner; or
 - (B) as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land.
 - (ii) the Landowner may register a plan of strata subdivision; and
 - (iii) the Landowner 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, such consent not to be unreasonably withheld or delayed; and
 - (B) the City, the Landowner and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City, acting reasonably and promptly.
- (b) The Landowner must pay the City's reasonable costs and expenses relating to any consent or documentation required due to the operation of this clause 11.2.

12. **TERMINATION AND INSOLVENCY**

- (a) The City may terminate this document by notice in writing to the Landowner if the Development Consent lapses or is surrendered by the Landowner.
- (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 Landowner 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 return the Security to the Landowner after first deducting any amounts owing to the City or costs incurred by the City by operation of this document; and
 - (iv) the City will, at the Landowner's cost, do all things reasonably required to remove this document from the certificate of title to the Land.
- (c) If an Insolvency Event occurs in respect of the Landowner:
 - (i) the Landowner may surrender the Development Consent and clauses 12(a) and 12(b) will apply; or
 - (ii) if the Landowner does not intend to exercise its right under clause 12(c)(i):
 - (A) the Landowner must notify the City of its intention within 40 Business Days of the date of the Insolvency Event;
 - (B) the parties will agree to extend the dates set out in Items 13 and 14 of Schedule 1; and
 - (C) if required, the parties will enter into a consent deed or deed of novation on terms acceptable to the City.
- (d) If the parties cannot agree an extended date in accordance with clause 12(c)(ii) within 10 Business Days of the date of the Landowner's notice under that clause, the City may determine the new date.

13. **CONFIDENTIALITY AND DISCLOSURES**

13.1 **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 13.2 or 13.3.

13.2 **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 13.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 13.2(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 13.2(b)(i).

13.3 **Disclosures required by law**

- (a) Subject to clause 13.3(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 13.3(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.

13.4 **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.

13.5 **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.

13.6 **Media releases**

The Landowner must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefit without the City's prior written consent, unless required under Australian Stock Exchange reporting obligations.

14. **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, fax 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 fax, it is taken to have been received when the addressee actually receives it in full and in legible form. 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 5pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and fax number and email address are those set out in Schedule 1 for the City's Representative and the Landowner's Representative, or as the person notifies the sender in writing from time to time.

15. **GENERAL**

15.1 **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.

15.2 **Access to information**

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

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

15.3 **Liability for expenses**

- (a) The Landowner must pay its own and the City's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Landowner 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.

15.4 **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.

15.5 **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.

15.6 **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.

15.7 **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.

15.8 **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.

15.9 **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.

15.10 **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.

15.11 **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.

15.12 **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.

15.13 **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 Landowner,

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

15.14 **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.

15.15 **Counterparts**

This document may be executed in counterparts. All counterparts taken together constitute one instrument.

16. **LIMITATION OF LANDOWNER'S LIABILITY**

- (a) The Landowner enters into this document in its capacity as trustee of the Trust and in no other capacity.
- (b) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of the Trust and agree that (to the maximum extent permitted by law) the Trustee will cease to have any Trustee Liability if the Trustee ceases for any reason to be trustee of the Trust.
- (c) A Trustee Liability may be enforced against the Trustee only to the extent to which:
 - (i) the Trustee is actually indemnified in respect of that Trustee Liability out of the property of the Trust; and
 - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Trust assets have been allocated to meet the indemnity and any other valid claims).
- (d) Subject to clause 16(e), no person will be entitled to:

- (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of the Trust,
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of the Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of the Trust.
- (e) The restrictions in clauses 16(c) and 16(d) do not apply to any Trustee Liability to the extent to which there is, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of the Trust, as a result of the Trustee's fraud, negligence or breach of trust.
- (f) Each other party to this document agrees that no act or omission of the Trustee (including any related failure to satisfy any Trustee Liabilities) will constitute fraud, negligence or breach of trust of the Trustee for the purposes of clause 16(e) to the extent to which the act or omission was caused or contributed to by any failure of that party to fulfil its obligations relating to the Trust or by any other act or omission of that party.
- (g) No attorney, agent or other person appointed in accordance with this document has authority to act on behalf of the Trustee in a way which exposes the Trustee to any personal liability, and no act or omission of such a person will be considered fraud, negligence or breach of trust of the Trustee for the purposes of clause 16(e).
- (h) This limitation of the Trustee's Liability applies despite any other provisions of this document and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document or its performance.
- (i) The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless the Trustee's liability is limited in the same manner as set out in clauses 16(a) to 16(h).
- (j) In this clause:
- (i) **Trust** means Pitt Property Trust ABN 97 819 139 836;
 - (ii) **Trust Deed** means the trust deed in respect of the Pitt Property Trust dated 22 September 2017 and as amended from time to time;

- (iii) **Trustee** means The Trust Company (Australia) Limited ACN 000 000 993; and
- (iv) **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this document or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this document or its performance.

DRAFT

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Folio identifier Auto Consol 13683-8, known as 46-54 Pitt Street, Sydney NSW 2000
2.	Development	Alterations to the existing commercial building on the Land, including extension of the façade on the ground level and level 1 and revised internal layouts to the lower ground, ground floor, level 1 (including external terrace) and level 2. The total Gross Floor Area of the Development on the Land is 10,492 square metres.
3.	City's Representative	Name: Graham Jahn – Director City Planning, Development and Transport Address: Town Hall, Level 1 456 Kent Street, Sydney NSW 2000 Email:
4.	Landowner's Representative	Name: Richard Tran Address: Level 18, 123 Pitt Street, Sydney NSW 2000 Email address: Richard.tran@perpetual.com.au
5.	Development Consent	D/2019/1385
6.	Existing VPA	None
7.	Condition of Development Consent requiring allocation of HFS	Condition 4(c)
8.	Required HFS	207 square metres
9.	Outstanding HFS (V) at the date of this document	207 square metres

10.	Unit rate of HFS for the purpose of this document (W)	\$2,073.03 per square metre plus GST
11.	Security Amount	A total amount of \$429,117.21
12.	Security Amount Due Date	The date that the Landowner signs this document.
13.	Due Date	The earlier of: (a) 1 January 2022; or (b) the date that is one month before the Occupation Certificate is issued for the Development.
14.	Call Date	The earlier of: (a) 1 February 2022; and (b) the date that the Occupation Certificate is issued 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 Landowner 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>	Item 1 of Schedule 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 Landowner 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 1.
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 excluded</p> <p>Section 7.12 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 excluded in respect of the Development and contributions (if any) under section 7.11 will not 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)	Not applicable because this document excludes section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 9
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 8
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 7
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	No
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	No
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Yes, see Items 13 and 14 of Schedule 1.
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)	No, see clause 2.5

EXECUTED as a deed.

Executed by
THE COUNCIL OF THE CITY OF SYDNEY (ABN 22 636 550 790) by its duly authorised officer in accordance with section 377 of the Local Government Act 1993, in the presence of:

Signature of witness

Signature of officer

Name

Name of officer

456 Kent Street, Sydney NSW 2000

Address of witness

Position of officer

Certified correct for the purpose of the *Real Property Act 1900* and executed for and on behalf of **THE TRUST COMPANY (AUSTRALIA) LIMITED** (ACN 000 000 993) in its capacity as trustee of the Pitt Property Trust ABN 97 819 139 836 by its duly appointed attorney under Power of Attorney
Book _____ No. _____
dated _____
in the presence of:

Signature of witness

By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

Name of witness (print)

Address of witness (print)

Name of attorney