

Planning Agreement

The Council of the City of Sydney and

Sydney Metro

East Site - comprising 28-34 O'Connell Street, 44-48 Hunter Street, and 37 Bligh Street Sydney NSW 2000

Reference: S153606

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions.....	1
1.2 Rules for interpreting this document.....	5
2. APPLICATION OF THE ACT AND THE REGULATION	6
2.1 Application of this document.....	6
2.2 Public Benefits to be made by Developer	6
2.3 Application of sections 7.11, 7.12 and 7.24 of the Act	6
2.4 City rights.....	7
2.5 Explanatory note	7
3. OPERATION OF THIS PLANNING AGREEMENT	7
3.1 Commencement	7
4. WARRANTIES	7
4.1 Mutual warranties.....	7
4.2 Developer warranties.....	8
5. PUBLIC BENEFITS	8
5.1 Developer to provide Public Benefits	8
6. ACHIEVEMENT OF SUSTAINABILITY COMMITMENTS/ENVIRONMENTAL PERFORMANCE INITIATIVES	8
6.1 Date of Achievement	8
6.2 Environmental Performance Initiatives	8
6.3 Non-completion of Public Benefits.....	9
7. INDEMNITY	10
8. DEFECTS LIABILITY	10
9. REGISTRATION	10
9.1 Registration of this document.....	10
9.2 Release of this document.....	10
10. ENFORCEMENT	11
11. DISPUTE RESOLUTION	11
11.1 Application	11
11.2 Negotiation	11
11.3 Not use information	12
11.4 Condition precedent to litigation	12
11.5 Summary or urgent relief	12

12.	TAXES AND GST	12
	12.1 Responsibility for Taxes	12
	12.2 GST free supply	12
	12.3 Supply subject to GST.....	12
13.	DEALINGS.....	13
	13.1 Dealing by the City	13
	13.2 Dealing by the Developer	13
14.	TERMINATION	15
15.	CONFIDENTIALITY, DISCLOSURES AND PRIVACY	16
	15.1 Use and disclosure of Confidential Information	16
	15.2 Disclosures to personnel and advisers	16
	15.3 Disclosures required by law.....	16
	15.4 Receiving party's return or destruction of documents.....	17
	15.5 Security and control.....	17
	15.6 Media releases	17
	15.7 Privacy.....	17
16.	NOTICES	17
17.	GENERAL.....	18
	17.1 Governing law	18
	17.2 Access to information	18
	17.3 Liability for expenses.....	18
	17.4 Relationship of parties.....	19
	17.5 Giving effect to this document.....	19
	17.6 Time for doing acts	19
	17.7 Severance.....	19
	17.8 Preservation of existing rights	19
	17.9 No merger.....	19
	17.10 Waiver of rights	20
	17.11 Operation of this document.....	20
	17.12 Operation of indemnities.....	20
	17.13 Inconsistency with other documents	20
	17.14 No fetter.....	20
	17.15 Counterparts	21
1.	PUBLIC BENEFITS - OVERVIEW	25
2.	PAYMENT OF COMMUNITY INFRASTRUCTURE CONTRIBUTION.....	26
	2.1 Payment.....	26

2.2	No trust.....	26
2.3	Expenditure by the City.....	26
3.	ENVIRONMENTAL PERFORMANCE INITIATIVES.....	26
3.1	Environmental Performance Commitment.....	26

SCHEDULES

Agreement Details	22
Requirements under the Act and Regulation (clause 2)	23
Public Benefits (clause 5).....	25
Permitted Dealings (clause 13)	28

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) **Sydney Metro** ABN 12 354 063 515 of Level 43, 680 George Street, SYDNEY NSW 2000 (**Sydney Metro**).

BACKGROUND

- (A) The Developer has requested the Planning Proposal which would permit the Development to be undertaken on the Land.
- (B) The Developer envisages that the Development will be undertaken by a third party proponent following a procurement process.
- (C) 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)*.

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 gazetted public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Policies means all formally adopted 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.

Commitment Agreement is an agreement between the NABERS National Administrator, the Office of Environment and Heritage NSW (OEH) and the Developer to design, build and commission the premises to achieve the applicable NABERS Energy star rating as described in Schedule 3 and otherwise has the meaning attributed to 'Commitment Agreement' under NABERS.

Community Infrastructure Contribution means a monetary contribution described as "Community Infrastructure Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

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.

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

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

Developer means Sydney Metro, or, to the extent that this document is novated to another entity pursuant to clause 13, that entity.

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

Development means the development of the Land 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 any 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.

Energy Efficient Review means an independent design review undertaken by a NABERS Certified Independent Design Reviewer sufficiently early in the design process to enable design changes to be made.

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)*.

Environmental Performance Initiatives means those parts of the Public Benefit described as "Environmental Performance Initiatives–NABERS" and "Environmental Performance Initiatives -Green Star Design and Construct Rating" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

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)*.

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics 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; 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.

Instrument Change means an amendment to the Sydney LEP in accordance with the Planning Proposal.

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

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

NABERS means the National Australian Built Environment Rating System that measures the environmental performance of Australian buildings, tenancies and homes and is managed nationally by the NSW Office of Environment and Heritage, on behalf of Commonwealth, state and territory governments.

NABERS National Administrator has the meaning attributed to 'Commitment Agreement' under NABERS.

Occupation Certificate has the same meaning as in the Act.

Personal Information means:

- (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* (NSW);
- (b) health information within the meaning of the *Health Records and*

Information Privacy Act 2002 (NSW); and

- (c) any information which does not fall within the scope of paragraphs (a) and (b) above, but is personal information within the meaning of the *Privacy Act 1988 (Cth)*.

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

Planning Proposal means the planning proposal for the Land which received Gateway Determination from the Department of Planning and Environment on 28 October 2022 (PP-2022-867).

Practical Completion means when the building construction is completed except for any omissions or defects that do not prevent the building from being reasonably capable of being used for its intended purpose.

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

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

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

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

Sydney LEP means *Sydney Local Environmental Plan 2012 (NSW)*.

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

1.2 Rules for interpreting this document

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

- (a) A reference to:
- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;

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

2. **APPLICATION OF THE ACT AND THE REGULATION**

2.1 Application of this document

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

- (a) the Land; and
- (b) the Instrument Change.

2.2 Public Benefits to be made by Developer

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

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

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

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

2.4 City rights

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

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

2.5 Explanatory note

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

3. **OPERATION OF THIS PLANNING AGREEMENT**

3.1 Commencement

This document will commence on the later of:

- (a) the date of execution of this document by all parties to this document; and
- (b) the date the Instrument Change enters into force.

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 legally entitled to request and pursue all consents and approvals that are required by this document and, subject to obtaining such consents and approvals, do all things necessary to give effect to this document;
 - (ii) 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
 - (iii) 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. **ACHIEVEMENT OF SUSTAINABILITY COMMITMENTS/ENVIRONMENTAL PERFORMANCE INITIATIVES**

6.1 Date of Achievement

The Developer must ensure that the Environmental Performance Initiatives are achieved on or before the date or milestone referred to in clause 1 of Schedule 3 of this document.

6.2 Environmental Performance Initiatives

- (a) The Developer must provide an Environmental Performance Initiatives Achievement Notice (**EPI Achievement Notice**). For the avoidance of doubt, the Developer can issue separate EPI Achievement Notices at separate times for different elements of the Environmental Performance Initiatives, however the Developer must ensure that the Environmental Performance Initiatives are achieved before the due date specified in Item 2 of clause 1 in Schedule 3.

- (b) The Developer must include in the EPI Achievement Notice:
 - (i) a copy of the executive summary of the Energy Efficient Review prepared by a NABERS certified Independent Design Reviewer in accordance with the NABERS requirements;
 - (ii) a copy of 12 months of sub-metering data for energy and water that informed the NABERS rating;
 - (iii) evidence that the NABERS rating for energy and water has been achieved;
 - (iv) evidence of the Building Climate Active certification following completion of NABERS ratings; and
 - (v) evidence post-occupancy of formal rating for NABERS Waste; and
 - (vi) evidence that the Green Star V1.3 Design and Construct Rating for Office has been achieved or if that standard has been updated or replaced, a commensurate rating under the updated or replacement standard.
- (c) If the Environmental Performance Initiatives have not been achieved on or before the date or milestone referred to in Item 2 of Schedule 3 to this document:
 - (i) the Developer must make a request in writing to meet the City to agree what alternative measures it will put into place in order to achieve a sustainable commercial development; or
 - (ii) if alternative measures have been previously agreed, the City may permit the Developer not to achieve the Environmental Performance Initiatives as set out in this document 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.

6.3 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) 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.
- (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.

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**

Not used

9. **REGISTRATION**

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 that it will formally request all consents to the registration of this document that are otherwise required, and within the capacity of the Developer to request, on the certificate of title to the Land within 10 Business Days of the execution of this document by all parties; 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 (but only to the extent that production of such documents or letters is a matter within the control of the Developer); and

(B) providing the City with a cheque or electronic funds transfer for registration fees payable in relation to registration of this document at NSW Land Registry Services.

(b) The Developer and the City 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.

(c) The City will notify the Developer of any registration of this document by the City and provide the Developer with a copy of all documents confirming any such registration.

9.2 Release of this document

If:

(a) the City is satisfied, acting reasonably, that the Developer has provided all Public Benefits (unless waived by the City in accordance with this document

or otherwise the subject of a notice issued under clause 6.3(a)) and otherwise complied with this document; or

(b) this document is terminated in accordance with clause 14,

then the City must promptly do all things reasonably required to remove this document from the certificate of title to the Land.

10. **ENFORCEMENT**

This document may be enforced in accordance with its terms.

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
 - (i) the Developer must not Deal with this document or the Land without:
 - (A) the prior written consent of the City, which must not be unreasonably withheld or delayed where the Developer complies with clause 13.2(a)(i)(B); and

- (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of novation generally in the form included in Annexure A to this document with the City's entry into such a deed not to be unreasonably withheld or delayed; and
- (C) prior to the proposed novation of its obligations under this document to a third party (the Incoming Party), the Developer must satisfy the City (acting reasonably) that the Incoming Party has sufficient assets, resources and expertise required to perform the Developer's obligations under this document;

and the City will use best endeavours to execute a deed generally in the form of Annexure A promptly when requested by the Developer; and

- (ii) the parties acknowledge that clause 13.2(a)(i) does not apply to Dealings in relation to the Land specified in Schedule 4 (other than any Dealing which benefits or affects the rights of the City, where the City's consent would otherwise be required by reason of the terms of the Dealing, or where the City's consent is required as part of the exercise of the City's statutory functions); and
 - (iii) in the event that the consent of the City is otherwise required in relation to any Dealings specified in Schedule 4, the City consents to those Dealings (other than any Dealing which benefits or affects the rights of the City, where the City's consent would be required by reason of it being the beneficiary of the Dealing, or otherwise by the terms of the Dealing, or where the City's consent is required as part of the exercise of the City's statutory functions).
- (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 subdivision which subdivides the Land to create separate stratum lots for:
 - (A) the Hunter Street Metro station (**Station Lot**);
 - (B) that part of the Land comprising the Development (**Development Lot**); and
 - (C) the airspace above the Development Lot (**Airspace Lot**),

and the City consents to this document remaining registered only on the certificate of title to the Development Lot upon registration of the plan of Subdivision;

- (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, which must not be unreasonably withheld or delayed where the Developer complies with clause 13.2(b)(iii)(B); and
- (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of novation generally in the form included in Annexure A to this document with the City's entry into such a deed not to be unreasonably withheld or delayed;
- (C) for the purposes of clause 13.2(b)(iii)(B), prior to the proposed novation of its obligations under this document to a third party (the Incoming Party), the Developer must satisfy the City (acting reasonably) that the Incoming Party has sufficient assets, resources and expertise required to perform the Developer's obligations under this document. The City will use best endeavours to execute a deed generally in the form of Annexure A promptly when requested by the Developer.

14. TERMINATION

- (a) Either party may terminate this document by notice in writing to the other party if:
 - (i) the Instrument Change does not enter into force within 24 months after the date of this document; or
 - (ii) the Sydney LEP is subsequently amended by an environmental planning instrument made after the Instrument Change, in a way that prevents the Development from proceeding; or
 - (iii) the Instrument Change is declared to be invalid by a Court of competent jurisdiction; or
- (b) If this document is terminated in accordance with clause 14(a), then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss each party may suffer as a result of the termination of this document; and
 - (iii) the City will, at the Developer's cost, do all things reasonably required to remove this document and any caveat from the certificate of title to the Land in accordance with clause 9.

15. **CONFIDENTIALITY, DISCLOSURES AND PRIVACY**

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.

15.7 Privacy

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

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 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Lot 1 in DP 536538, Lot 1 in DP 217112 & Lot 1 in DP 1107981, known as 28-34 O'Connell Street; Lot 1 in DP 59871 & Lot 2 in DP 217112, known as 44-48 Hunter Street; and SP58859 known as 37 Bligh Street, Sydney 2000.
2.	Development	<p>The over-station development (located wholly within the Development Lot including commercial and retail uses) that is permitted by the controls proposed in the Planning Proposal and subject to the resultant Instrument Change, but does not include:</p> <ul style="list-style-type: none"> • any development or other element that has been approved as State Significant Infrastructure, or development associated with that State Significant Infrastructure.
3.	City's Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email: planningsystemsadmin@cityofsydney.nsw.gov.au</p>
4.	Developer's Representative	<p>Name: Ivan Glavinic, Executive Director Place Making and Property</p> <p>Address: Sydney Metro, Level 43, 680 George Street, Sydney NSW 2000</p> <p>Email: Ivan.Glavinic@transport.nsw.gov.au</p>
5.	Development Application	Means any development application submitted to the City in connection with 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) Yes</p> <p>(b) No</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 environmental planning instrument 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) of 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)	There is no application of section 7.11 of the Act 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)	N/A
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)	Payment of the Community Infrastructure Contribution
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Not applicable
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 the relevant Environmental Performance Initiatives
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

Item	Public Benefit	Attributed Value	Due date	Additional specifications
1.	Community Infrastructure Contribution	3% of the proposed cost of carrying out the Development calculated in accordance with the "development cost" as set out in section 2.3 of the City's Contributions Plan 2020 (as amended in 2021).	On or before the date of issue of the first Construction Certificate for the Development, excluding any Construction Certificate issued for demolition of existing structures on the Land, early works or works below ground level.	The payment of the Community Infrastructure Contribution in accordance with the terms of this document will satisfy the Developer's obligation to pay any applicable contribution pursuant section 7.12 and section 7.11 of the Act in full.
2	Environmental Performance Initiatives NABERS	Nil	<p>Within 24 months of Practical Completion of the Development</p> <p>Within 24 months after issue of the final Occupation Certificate</p>	<p>a.6 star Green Star Buildings V1certified Rating, as that standard applies at the date of this document (Current Standard). If the Current Standard is updated, then the relevant standard for the purposes of this item 2 will be the standard that is commensurate with the Current Standard.</p> <p>b.6-star NABERS Energy for Offices rating (Base building) (Commitment Agreement) (without Green Power);</p>

				c.4.5-starNABERS Water for Offices rating
--	--	--	--	---

2. PAYMENT OF COMMUNITY INFRASTRUCTURE CONTRIBUTION

2.1 Payment

The Developer must pay the Community Infrastructure Contribution to the City on the due date stated in Item 1 in the table in clause 1 of Schedule 3 in cash or by electronic funds transfer or unendorsed bank cheque.

2.2 No trust

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

2.3 Expenditure by the City

The City will use the Community Infrastructure Contribution to achieve the public benefit of facilities, amenities and services to meet the needs of the growing residential and workforce population within Central Sydney.

3. ENVIRONMENTAL PERFORMANCE INITIATIVES

3.1 Environmental Performance Commitment

(a) Prior to the issue of the first Construction Certificate for the Development, excluding any Construction Certificate issued for demolition of existing structures on the Land, works in relation to any Metro station, early works or works below ground level, the Developer must submit to the City’s Representative:

- (i) the signed Commitment Agreement;
- (ii) a hydraulic engineer report demonstrating water efficiency and how the proposed building is likely to achieve a 4.5 star NABERS water rating for the commercial component; and
- (iii) the executive summary of the Energy Efficient Review prepared by a NABERS certified Independent Design Reviewer;

together being the “Environmental Performance Commitment”.

(b) If the Developer fails to provide an Environmental Performance Commitment that will achieve the required NABERS ratings contained in Item 2 of clause 1 of Schedule 3, then the Developer will meet with the City

to agree on alternative measures it will put in place in order to achieve a sustainable Commercial Development.

- (c) The Developer will keep the City informed of its progress in relation to the achievement of its commitments with respect to the Environmental Performance Initiatives at regular intervals.

SCHEDULE 4

Permitted Dealings (clause 13)

The City consents to the variation, termination, extinguishment, or removal from title of the following dealings affecting the Land, provided that any such dealing does not benefit or affect any rights or interests of the City, where the City's consent would otherwise be required by reason of the terms of the dealing, or where the City's consent would be required as part of the exercise of the City's statutory functions:

Title of the Land	Dealing No.	Encumbrance description
Lot 1 in DP217112, Lot 1 in DP536538, Lot 1 in DP1107981 (28-34 O'Connell Street)	BK 176 NO 362	RIGHT OF WAY AND SUCH RIGHTS OF WAY AS MAY SUBSIST AFFECTING THE WHOLE OF LOT 1 IN DP217112
	BK 176 NO 363	RIGHT OF WAY AFFECTNG THE PART OF LOT 1 IN DP1107981 SHOWN SO BURDENED IN PLAN WITH BK 176 NO 363
	BK 1133 NO 590	AGREEMENT AFFECTING LOT 1 IN DP1107981
	B146826	RIGHT OF WAY AFFECTNG THE PART(S) OF LOT 1 IN DP1107981 SHOWN SO BURDENED IN DP176803
	C92689	EASEMENT FOR SUPPORT AFFECTING THE PART OF LOT 1 IN DP1107981 SHOWN BURDENED IN PLAN WITH C92689
	J516377	RIGHT OF WAY AFFECTING THE PART OF LOT 1 IN DP217112 SHOWN AS "SITE OF PROPOSED RIGHT OF WAY(VARIABLE WIDTH) AND EASEMENT FOR LIGHT & AIR(VARIABLE WIDTH)" IN PLAN WITH J516377
	DP578294	PART OF THE LAND BEING LOT 1 IN DP1107981 IS LIMITED IN STRATUM AS REGARDS THE PART DESIGNATED (X) IN DP110798
Lot 1 in DP59871 and Lot 2 in DP217112 (44-48 Hunter Street)	BK 176 NO 362	RIGHT OF WAY AND SUCH RIGHTS OF WAY AS MAY SUBSIST AFFECTING THE WHOLE OF LOT 1 IN DP217112
	J516377	RIGHT OF WAY APPURTENANT TO THE LAND ABOVE DESCRIBED AFFECTING THE LAND SHOWN AS PROPOSED RIGHT OF WAY VARIABLE WIDTH IN PLAN WITH J516377
	AI866892	EASEMENT FOR ROCK ANCHORS AFFECTING THE PARTS DESIGNATED (E2) IN PLANS WITH AI866892
	AI866893	EASEMENT FOR CRANE SWING AFFECTING THE WHOLE OF THE LAND ABOVE DESCRIBED
	AI866894	EASEMENT FOR PROTECTIVE WORKS AFFECTING THE PART OF LOT 2 IN DP217112 DESIGNATED (E1) IN PLAN WITH AI866894
Any leasehold interest affecting title.		
Lot 1 in DP626651 (33 Bligh Street)	BK 176 NO 362	RIGHT OF WAY AFFECTING THE PART OF LOT 1 IN DP626651 SHOWN SO BURDENED IN THE TITLE DIAGRAM
	BK 176 NO 363	RIGHT OF WAY AFFECTING THE PART OF LOT 1 IN DP626651 SHOWN SO BURDENED IN THE TITLE DIAGRAM

	BK 1103 NO 407	RIGHT OF WAY AFFECTING THE PART OF LOT 1 IN DP626651 SHOWN SO BURDENED IN THE TITLE DIAGRAM
	BK 1133 NO 590	AGREEMENT AFFECTING LOT 1 IN DP626651
	BK 1607 NO 214	RIGHT OF WAY AFFECTING THE PART OF LOT 1 IN DP626651 SHOWN SO BURDENED IN THE TITLE DIAGRAM
	B146826	RIGHT OF WAY APPURTENANT TO PART OF THE LAND ABOVE DESCRIBED AFFECTING THE LAND SHOWN SO BENEFITED IN B146826 AFFECTING PART OF THE LAND IN DP71198 SHOWN IN DP176803
	C92689	EASEMENT FOR SUPPORT APPURTENANT TO THE PART OF LOT 1 IN DP626651 SHOWN SO BENEFITTED IN THE TITLE DIAGRAM AFFECTING THE PART OF LOT 1 IN DP626651 IN DP71198 SHOWN IN C92689
	DP639400 & 5531462	EASEMENT FOR VERTICAL VENTILATOR AND HORIZONTAL DUCT AFFECTING THE PART OF LOT 1 IN DP626651 SHOWN SO BURDENED IN DP639400 VARIATION OF EASEMENT DP639400
	Any leasehold interest, or other interest or encumbrance benefiting, burdening or otherwise affecting the titles.	
All lots and common property in strata plan SP58859 (37 Bligh Street)	DP639400	EASEMENT FOR VERTICAL VENTILATOR AND HORIZONTAL DUCT APPURTENANT TO THE LAND ABOVE DESCRIBED
	5531539	RESTRICTION(S) ON THE USE OF LAND
	SP58859	POSITIVE COVENANT
Any other easement, covenant, restriction, building management statement, strata management statement, leasehold interest, or other interest or encumbrance (whether registered or unregistered) benefiting, burdening or otherwise affecting the above titles comprising the Land required to be varied, terminated, extinguished, or removed for the purposes of the Development, other than any dealing which benefits or affects any rights or interests of the City, where the City's consent to its removal would otherwise be required by reason of the terms of the dealing, or where the City's consent would be required to its removal as part of the exercise of the City's statutory functions.		

EXECUTED as a deed.

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

Signature of officer

Signature of witness

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

Name

Position of officer

456 Kent Street, Sydney NSW 2000
Address of witness

EXECUTED BY SYDNEY METRO
(ABN 12 354 063 515) by its duly
authorised officer in the presence of:

Signature of Witness

Signature of Authorised Officer

Name

Name

Deed of Novation

The Council of the City of Sydney ABN 22 636 550 790 and **[party name]**
Alt[ABN/ACN/ARBN][number] and **[party name]** Alt[ABN/ACN/ARBN][number]

For ***Planning Agreement re [description/address] dated #–
Novation date: #***

Reference:

Deed of Novation (Planning Agreement)

Version number and year of contract

Green Global Connected

CONTENTS

CLAUSE	PAGE
<u>1. DEFINITIONS AND INTERPRETATION</u>	33
<u>1.1 Definitions</u>	33
<u>1.2 Rules for interpreting this document</u>	33
<u>2. NOVATION</u>	33
<u>3. RIGHTS AND OBLIGATIONS</u>	33
<u>4. RELEASE AND LIABILITY</u>	34
<u>4.1 City</u>	34
<u>4.2 Outgoing Party</u>	34
<u>5. CONFIRMATION OF PLANNING AGREEMENT</u>	34
<u>6. REPRESENTATIONS AND WARRANTIES</u>	34
<u>6.1 Authority</u>	34
<u>6.2 Authorisations</u>	34
<u>7. GENERAL</u>	34

DRAFT

THIS DEED OF NOVATION is made on

20[insert].

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. [Insert name] ABN [insert number] of [insert address] (the **Outgoing Party**).
3. [Insert name] ABN [insert number] of [insert address] (the **Incoming Party**).

BACKGROUND

- A. The City and the Outgoing Party are parties to the Planning Agreement.
- B. The parties agree to novate the Planning Agreement as set out in this Deed.

THE PARTIES AGREE AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

Effective Date means date of completion of the Incoming Party's acquisition of the Property.

Planning Agreement means the agreement named "Planning Agreement" dated [insert] entered into between the City and the Outgoing Party registration number [insert].

1.2 Rules for interpreting this document

Words and expressions defined in the Planning Agreement have the same meaning in this Deed.

2 NOVATION

The parties acknowledge and agree that the Planning Agreement is novated so that, on and from the Effective Date:

- a) the Incoming Party replaces the Outgoing Party under the Planning Agreement; and
- b) any reference in the Planning Agreement to the Outgoing Party will be read as a reference to the Incoming Party.

3 RIGHTS AND OBLIGATIONS

On and from the Effective Date:

- a) the Incoming Party obtains the rights and assumes the obligations and liabilities of the Outgoing Party under the Planning Agreement in respect of events occurring on and after the Effective Date; and
- b) the City as the continuing party must continue to comply with its obligations and liabilities under the Planning Agreement on the basis that the Incoming Party has replaced the Outgoing Party under the Planning Agreement in accordance with this Deed.

4 RELEASE AND LIABILITY

4.1 City

The City releases and discharges the Outgoing Party from:

- a) all of the Outgoing Party's obligations and liabilities under the Planning Agreement; and
- b) all actions, claims, demands and proceedings that it may have against the Outgoing Party in respect of the performance of, and obligations under the Planning Agreement,

arising in respect of events occurring on or after the Effective Date.

4.2 Outgoing Party

The Outgoing Party releases and discharges the City from:

- a) all of the City's obligations and liabilities under the Planning Agreement; and
- b) all actions, claims, demands and proceedings that it may have against the City in respect of the performance of, and obligations under the Planning Agreement,

arising in respect of events occurring on or after the Effective Date.

5 CONFIRMATION OF PLANNING AGREEMENT

Subject to this Deed, the City and the Incoming Party ratify and confirm the Planning Agreement, which remains fully effective.

6 REPRESENTATIONS AND WARRANTIES

6.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this Deed.

6.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms.

7 GENERAL

- a) This Deed is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under, or relating to, this Deed.
- b) Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this Deed.
- c) This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.
- d) Nothing in this Deed in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

EXECUTED as a deed.

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

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000

Address of witness

EXECUTED by [**OUTGOING PARTY**]
[**ABN**] in accordance with s127(1) of
the Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [**INCOMING PARTY**]
[**ABN**] in accordance with s127(1) of
the Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name