

# EXPLANATORY NOTE PURSUANT TO REGULATION 205 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT REGULATION 2021

## 15-25 HUNTER STREET & 105-107 PITT STREET, SYDNEY

### Planning Proposal: 15-25 Hunter St & 105-107 Pitt St Sydney

#### Background

This explanatory note supports the notification of a draft Planning Agreement.

In October 2020, the Council of the City of Sydney received a request to amend the planning controls that apply to 15-25 Hunter Street & 105-107 Pitt Street Sydney (**Land**) under Sydney Local Environmental Plan 2012 (**SLEP 2012**).

A Planning Proposal has been prepared to enable new commercial office tower on the site, under the Martin Place Sun Access Plane by:

1. providing for a maximum floor space ratio of 22:1 above ground inclusive of design excellence under clause 6.21D(3)(b) of the SLEP 2012
2. providing for a maximum floor space ratio below ground of 2:1 subject to on-site servicing and access requirements for the site not being compromised
3. listing 15-17 Hunter Street as a local heritage item in Schedule 5 – Environmental Heritage of the SLEP 2012

The purpose of this explanatory note is to support the notification of a Planning Agreement, under section 7.4 of the *Environmental Planning and Assessment Act 1979 (Act)* by meeting the statutory requirements of regulation 205 of the *Environmental Planning and Assessment Regulation 2021 (Regulation)*.

This explanatory note has been prepared jointly by the parties.

The public benefits set out in the Planning Agreement do not in any way exclude the developer or owner (as the case may be) from paying monies under section 7.12 of the Act.

This explanatory note is not to be used to assist in construing the Planning Agreement.

#### 1. Parties to the Planning Agreement

The parties to the Planning Agreement are Milligan Group Pty Ltd (**Developer**), and the Council of the City of Sydney (**City**).

#### 2. Description of the Subject Land

The Planning Agreement applies to Lot 1 in DP 630190, Lot A in DP 109825, Lot B in DP 109825 known as 15 Hunter Street Sydney; Lot 1 in DP 59754 known as 19-21 Hunter Street Sydney; SP 69888 known as 23-25 Hunter Street Pitt Street, Sydney; SP60693 known as 105 Pitt Street Sydney; and Lot 1 in DP 63968 known as 107 Pitt Street Sydney.

#### 3. Summary of the Objectives, Nature and Effect of the Proposed Agreement

The objective of the Planning Agreement is to secure public benefits in connection with the Planning Proposal for the Land.

The nature of the Planning Agreement is to secure:

- A monetary contribution of approximately \$9,900,000 towards community infrastructure in Central Sydney;
- Creation of a through site link between Hunter and Pitt Streets, including registration of a public right of footway;

- Provision of public art on the site at an estimated \$1,650,000; and
- ESD commitments of a 6 star Office Green Star V1 rating, minimum 5.5 star NABERS energy, 4 star NABERS water rating and 5 stars NABERS waste rating

The effect of the proposed agreement is for the public benefits to be delivered in a timely manner with the development of the Land (as set out in the Planning Agreement).

#### **4. Assessment of the Merits of the Proposed Agreement**

##### **(a) How the Planning Agreement promotes the public interest and one or more of the objects of the Act**

The Planning Agreement promotes the objects of the Act, in particular objects identified in section 1.3 (c) and 1.3(g) of the Act which is to promote the orderly and economic use and development of land and to promote good design and amenity of the built environment. The Planning Agreement promotes the objects of the Act by:

- providing improved community infrastructure which will support and service the existing and future population and will contribute to greater amenity and infrastructure in the locality; and
- providing improved environmental sustainable development through Environmental Excellence Initiatives.

##### **(b) How the Planning Agreement promotes the elements of the Council's charter and objects under the Local Government Act 1993**

The Planning Agreement promotes a number of elements of the Council's charter under section 8 of the *Local Government Act* 1993 (NSW) consistent with the guiding principles for Councils under that Act. In particular, the Planning Agreement through the delivery of the public benefits allows Council to:

- (i) provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- (ii) exercise community leadership;
- (iii) properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- (iv) in its capacity as the custodian and trustee of public assets, effectively plan for, account for and manage the assets for which it is responsible;
- (v) engage in long-term strategic planning on behalf of the local community; and
- (vi) keep the local community and the State government (and through it, the wider community) informed about its activities.

##### **(c) The impact of the Planning Agreement on the public or any section of the public**

The Planning Agreement will benefit the public and local community by providing improved infrastructure to the area, and the building will achieve improved environmental performance. In this way the Planning Agreement promotes the public interest.

This Planning Agreement is in accordance with the relevant provisions of the Planning Proposal and site-specific development control plan for the Land.

**(d) Whether the Planning Agreement conforms with Council's capital works program**

Yes. The Planning Agreement conforms to Council's capital works program.

**(e) The planning purpose or purposes of the Planning Agreement**

The Planning Agreement will serve a planning purpose by enhancing the public domain and local infrastructure to reflect the changing nature of the area and the needs of the anticipated incoming population.

It is considered that the Planning Agreement provides for a reasonable means by which to achieve these planning purposes given the extent of the statutory tools that are available to Council by which it can deliver the proposed public benefits.

**(f) Compliance with certain requirements prior to issue of construction, occupation or subdivision certificates.**

The following requirements of the Planning Agreement must be complied with before:

- (i) A construction certificate is issued:** Payment of the Monetary Contribution, submission of the Environmental Performance Commitment and Detailed Public Art Plan, and provision of the bank guarantee.
- (ii) An occupation certificate is issued:** Provision of the Public Art, Confirmation that the project is a Green Star registered project; Confirmation that the project is on track to comply with the Green Star rating proposed and creation of the easement for public access.
- (iii) A subdivision certificate is issued:** Nil

# Planning Agreement

The Council of the City of Sydney and

Milligan Group Pty Ltd

15 Hunter Street; 19-21 Hunter Street; 23-25 Hunter Street;  
105 Pitt Street and 107 Pitt Street Sydney

Reference: S153345

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**THIS PLANNING AGREEMENT** is made on  
**BETWEEN:**

2022

- (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) **Milligan Group Pty Ltd** ABN 37 157 854 816 c/- FT Sydney Pty Ltd as trustee for FT Sydney Unit Trust ABN 35 756 298 818 (wholly owned subsidiary of Milligan Group) of 321 Riley Street Surry Hills NSW 2010 (the **Developer**)

## **BACKGROUND**

- (A) The Developer has requested the Planning Proposal and intends to undertake the Development on the Land.
- (B) The Developer warrants that it will be the ultimate registered sole proprietor for all land titles pursuant to the planning proposal before execution of this document. In the event this is not the case the Developer undertakes to secure execution of this document by all registered proprietors at the required time until such time that it is the sole registered proprietor.
- (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)*.

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

**Attributed Value** means the value the City and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in clause 1 of Schedule 3 of this document.

**Authorisation** means:

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

including any renewal or amendment.

**Business Day** means a day (other than a Saturday, Sunday or 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.

**Completion** means the point at which the Developer's Works and/or the Public Art are complete except for minor defects:

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

**Completion Notice** means a notice issued by the Developer in accordance with clause 6.2

**Confidential Information** means:

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

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

Confidential Information does not include information that:

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

**Construction Certificate** has the same meaning as in the Act.

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

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

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

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

**Defects Guarantee Amount** means, in relation to the Developer's Works/and or the Public Art, an amount equal to 10% of the Attributed Value of the Developer's Works/and or the Public Art, and **Defects Guarantee** has a corresponding meaning.

**Defects Liability Period** means in relation to the Public Benefits, the period of 12 months from the date on which the Developer's Works reach Completion.

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

**Developer's Works** means that part of the Public Benefit described as "Developer's Works in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

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

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

**Development Consent** means 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.

**Easement** means the interest, substantially in the form attached to this document at Annexure A, to be created over the Easement Land in accordance with Schedule 3 of this document which form part of the Public Benefits.

**Easement Land** means land over which the Easement is to be created.

**Environmental Laws** means all laws and legislation relating to environmental

**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)*.

**Guarantee** means one or more bank guarantees or documentary performance bonds for the Guarantee Amount or the Defects Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
  - (i) BBB + (Standard & Poors and Fitch);
  - (ii) Baa 1 (Moody's); or

- (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the City.

**Guarantee Amount(s)** means the total amount listed in Item 6 of Schedule 1 of this document.

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

**Index Number** means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

**Infrastructure Contribution** means that part of the Monetary Contribution described as "Infrastructure Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

**Insolvency Event** means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
  - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
  - (ii) being unable to pay its debts or otherwise insolvent;

- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

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

**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.

**Monetary Contribution** means that part of the Public Benefits to be paid by the Developer to the City as the Infrastructure Contribution and the Affordable Housing Monetary Contribution in accordance with this document.

**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.

**Through-site Link** means that part of the Public Benefit described as "Through-site Link" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

**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, Industry and Environment 19 August 2022.

**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 Art** means that part of the Public Benefit described as the "Public Art Contribution" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

**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).

**Standards** means the policies, procedures and standards for carrying out the Developer's Works and the Public Art, listed non-exhaustively at clause 8 of Schedule 3.

**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 obtain all consents and approvals that are required by this document and 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. **COMPLETION**

#### 6.1 Date of Completion

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

## 6.2 Developer completion notice – Public Benefits

When, in the reasonable opinion of the Developer, a Public Benefit has reached Completion, the Developer must notify the City's Representative in writing (**Completion Notice**). For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Public Benefits, however the Developer must ensure that Completion is achieved for the Public Benefits before the due date specified in Item 1 of Schedule 3.

## 6.3 Public Art

In relation to the Public Art, the Developer must include in the Completion Notice:

- (i) a statement that the Public Art installation has been completed;
- (ii) a copy of the draft Final Public Art Report in electronic format;
- (iii) copies of any warranties, guarantees, maintenance information or other material in the possession of the Developer reasonably required for the City to assume responsibility for the Public Art on land it owns or will own (if applicable);
- (iv) copies of any warranties, contractual arrangements, guarantees, insurance policies or other evidence that Public Art not on city Land will be adequately maintained during the Defects Liability Period (if applicable).

If the City has elected not to take ownership of the Public Art, the Developer must enter into an agreement with the City for the installation of the Public Art on the City Land in accordance with clause 5.1 (b)(ii) of Schedule 3.

## 6.4 Inspection by the City

- (a) The City's Representative must inspect the Public Art within 5 Business Days of the date that the Completion Notice is received by the City. The City's Representative may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 6.2. Within 10 Business Days of the date of the inspection by the City's Representative, the City must by written notice to the Developer:
  - (i) state that Completion has been achieved, and in relation to the Public Art the Final Public Art Plan has been approved by the City;
  - (ii) state that Completion has not been achieved, and in relation to the Public Art the Final Public Art Plan has not been approved, and, if so, identify the Defects, errors or omissions which, in the reasonable opinion of the City's Representative, prevent Completion, (in which case, clauses 6.2 and 6.3 apply again); or
  - (iii) issue a notice under clause 6.6(a).
- (b) Nothing in this clause 6, or any notice issued under this clause 6.6, will:

- (i) reduce or waive in any manner the Developer's responsibility to:
  - (A) deliver the Public Art in accordance with this document; or
  - (B) the Developer's responsibility to correct Defects, errors or omissions, whether or not these are identified by the City; or
- (ii) create any liability for the City in relation to any defective aspect of the Public Art.

## 6.5 **Environmental Performance Initiatives**

- (a) In relation to the Environmental Performance Initiatives 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 4 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 4 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.

#### 6.6 Non-completion of Public Benefits

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

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

- (c) If the City exercises its rights under this clause 6.6 to complete the Public Benefits, the Developer grants the City a licence for the period necessary for the City to access the Land to carry out, or procure the carrying out, of the Public Benefits.

## 7. **INDEMNITY**

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

## 8. **DEFECTS LIABILITY**

### 8.1 Security for Defects Liability Period

- (a) Upon Completion of the Developer's Works and/or the Public Art, the Developer must deliver a Defects Guarantee for the relevant Defects Guarantee Amount to the City.
- (b) Until the expiry of the relevant Defects Liability Period, the City may retain the Defects Guarantee as security for the Developer's performance of its obligations under this clause 8.

### 8.2 Defect in the Public Benefits

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

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

- (b) If the Developer is unable or unwilling to comply with clause 8.2(a), or fails to rectify the Defect within three months of receiving notice from the City under clause 8.2(a), the City may:
  - (i) rectify the Defect itself;
  - (ii) make a claim on the Defects Guarantee in accordance with clause 10 for the actual costs of the City in rectifying the Defect; and
  - (iii) to the extent the costs incurred to rectify the Defect exceeds the Defects Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the City.
- (c) If the City requires access to the Land to rectify any Defect, the Developer grants the City and its contractors a licence for such period as is necessary for the City and its contractors to access the Land to carry out, or procure the carrying out, of the rectification works.

## 9. **REGISTRATION AND CAVEAT**

### 9.1 Registration of this document

- (a) The Developer:
  - (i) consents to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land;
  - (ii) warrants, s that it will formally request all consents to the registration of this document 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; 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 Registration of caveat

The Developer acknowledges and agrees that:

- (a) when this document is fully executed, the City is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of s74(1) of the *Real Property Act 1900*;
- (b) consequently the City has a sufficient interest in the Land in respect of which to lodge a caveat notifying that interest in the Land;
- (c) the City may lodge a caveat on the Land to protect its interests under this document, and the Developer will not object nor will it seek to remove the caveat, other than in the circumstances set out in clause 9.2(f);
- (d) if the City lodges a caveat in accordance with clause 9.2(c), the City must do all things reasonably necessary and without delay to ensure that the caveat does not prevent or delay either the registration of this document in accordance with clause 9.1, or any Dealing in accordance with clause 13.2;
- (e) the City, as caveator, must provide any consent reasonably required to enable this document or any Dealing in accordance with clause 13.2 to be registered on the title to the Land; and
- (f) the City must promptly do all things reasonably required to remove the caveat from the title to the Land, either:
  - (i) upon registration of this document in accordance with clause 9.1; or
  - (ii) upon termination of this document in accordance with clause 14.

## 9.3 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) 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

### 10.1 Developer to provide Guarantee

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

### 10.2 Adjustment of Guarantee Amount

- (a) On each anniversary of the date of the Guarantee (the "Adjustment Date"), the Guarantee Amounts are to be adjusted to a revised amount by applying the following formula:

$$\mathbf{RGA} = \mathbf{GA} \times (\mathbf{A/B})$$

where:

**RGA** is the revised guarantee amount applicable from the relevant Adjustment Date

**GA** is the Guarantee Amount that is current on the relevant Adjustment Date

**A** is the Index Number most recently published before the relevant Adjustment Date

**B** is the Index Number most recently published:

- (i) before the date of the Guarantee for the first Adjustment Date; and
  - (ii) before the preceding Adjustment Date for every subsequent Adjustment Date
- (b) If after the formula is applied the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.
  - (c) The City must give the Developer written notice of the revised Guarantee Amounts to apply from the relevant Adjustment Date.
  - (d) The Developer must give the City replacement or further Guarantees so that the City holds Guarantees for an amount equal to the revised guarantee amounts no later than 20 Business Days after receipt of a notice given under clause 10.2(c).



### 10.3 Right of City to claim on Guarantee

- (a) The Developer agrees that the City may make an appropriation from the Guarantee in such amount as the City, acting reasonably, thinks appropriate if:
  - (i) the Developer fails to comply with clause 2 of Schedule 3 (payment of Monetary Contribution);
  - (ii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.6(a)(i);
  - (iii) an Insolvency Event occurs in respect of the Developer;
  - (iv) the Developer fails to deliver the Public Benefits in accordance with clause 6.6(b);
  - (v) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document; or
  - (vi) the City reasonably incurs any other expense or liability in exercising its rights and powers under this document.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.2 must be applied only towards:
  - (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document; and
  - (ii) the costs and expenses incurred by the City carrying out any works required to achieve the Public Benefits; and
  - (iii) in relation to the Public Art, procuring and installing other Public Art on City land.

### 10.4 Expenditure by the City

If the City claims on the Guarantee to Complete the Public Art, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Public Art to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or
- (b) may expend more than the Guarantee Amount. If the City expends more money than the Guarantee Amount and those costs were properly incurred, then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer.
- (c) Where the Developer has failed to deliver the Public Art and the City elects not to complete the Public Art in accordance with the approved Public Art Plan, then the City may not expend more than the Guarantee Amount held for the Public Art in delivering public art.

## 10.5 Top-up and return of Guarantee

- (a) If the City calls upon the Guarantee in accordance with this clause 10 then the Developer must promptly provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with paragraph (b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.
- (b) If:
  - (i) the monies secured by the Guarantee have not been expended;
  - (ii) the City has concurred with Completion in accordance with clause 6 of this document, taking into account any approved non-completion of Public Benefits approved by clause 6.6(a) of this document; and
  - (iii) the City has been provided with the Defects Guarantee in accordance with clause 8.1,

then the City will promptly return the Guarantee to the Developer following the issue of a notice pursuant to clause 6.4(a)(i) of this document.

- (c) If, following expiry of the Defects Liability Period, the City is satisfied that all Defects notified to the Developer by the City in accordance with clause 8.2(a)(ii) have been rectified in accordance with clause 8 then the City must promptly return to the Developer the Defects Guarantee.

## 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 or consent (the form of which will be in the City's standard precedent and on terms acceptable to the City).
- (b) On and from registration of this document in accordance with clause 9:
  - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land, provided the purchaser enters into a deed of novation with the City and the Developer (the form of which will be in the City's standard precedent and on terms acceptable to the City, acting reasonably);
  - (ii) the Developer may register a plan of strata subdivision, and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan; and
  - (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
    - (A) the prior written consent of the City, 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 or consent (the form of which will be in the City's standard precedent and on terms acceptable to the City).

## 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
  - (iv) the Development Consent lapses or is surrendered by the Developer.
- (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;
  - (iii) the City will return the Guarantee to the Developer after first deducting any amounts owing to the City or costs incurred by the City by operation of this document. If in exercising its rights under this document the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer; and
  - (iv) 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, the Developer's Representative or as the person notifies the sender in writing from time to time.

### 17. **CHAIN OF RESPONSIBILITY**

- (a) In this clause:
  - (i) **Chain of Responsibility** means legislation that extends liability for Road Law offences to all parties whose actions, inactions or demands



influence conduct on the road particularly in relation to speed, fatigue, vehicle standards, vehicle roadworthiness, load restraint, and mass and dimension.

- (ii) **HVNL** means the *Heavy Vehicle National Law* (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.
  - (iii) **Heavy Vehicle** has the meaning given to it in the HVNL.
  - (iv) **Road Law** means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the HVNL.
- (b) The Developer must in connection with any activity carried out under or in relation to this document on land owned by the City:
- (i) comply with all Chain of Responsibility legislation and must ensure that any activity relating to a Heavy Vehicle used in connection with this document is undertaken in accordance with all applicable Chain of Responsibility obligations (including any fatigue, speed, mass, dimension or load restraint requirements);
  - (ii) not ask, direct or require (directly or indirectly) the driver of a Heavy Vehicle or a party in the Chain of Responsibility to do or not do something the Developer knows, or ought reasonably to know, would have the effect of causing the driver to contravene their Chain of Responsibility obligations, including to breach any fatigue, speed, mass, dimension or load restraint requirements;
  - (iii) ensure that any subcontractors (where any Heavy Vehicle activities are sub-contracted under this document) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 17(b).
- (c) The Developer will ensure that it has proper processes in place to manage its Chain of Responsibility obligations under this clause 17.
- (d) The Developer must provide the City, upon request, with all information and documentation reasonably required by the City to monitor or audit compliance with this clause (including permitting inspections of vehicles and business premises).

## 18. GENERAL

### 18.1 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.

#### 18.2 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.

#### 18.3 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.

#### 18.4 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.

#### 18.5 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.

#### 18.6 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.

#### 18.7 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.

#### 18.8 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.

#### 18.9 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.

#### 18.10 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.

#### 18.11 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.

#### 18.12 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.

#### 18.13 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.

#### 18.14 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.

#### 18.15 Counterparts

This document may be executed in counterparts.

## SCHEDULE 1

### Agreement Details

| ITEM | TERM                              | DESCRIPTION  |
|------|-----------------------------------|--|
| 1.   | <b>Land</b>                       | Lot 1 in DP 630190, Lot A in DP 109825, Lot B in DP 109825 known as 15 Hunter Street Sydney; Lot 1 in DP 59754 known as 19-21 Hunter Street Sydney; SP 69888 known as 23-25 Hunter Street Pitt Street, Sydney; SP60693 known as 105 Pitt Street Sydney; and Lot 1 in DP 63968 known as 107 Pitt Street Sydney.   |
| 2.   | <b>Development</b>                | <p>Development of a new commercial office tower on the Land as detailed in the Planning Proposal and subject to the resultant Instrument Change.</p> <p>The maximum total Gross Floor Area of the Development on the Land at or above ground level on the Land is 46,376 square metres, and the maximum Gross Floor Area of the Development below ground level on the Land is 4,216 square metres.</p> |
| 3.   | <b>City's Representative</b>      | <p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email: <a href="mailto:planningsystemsadmin@cityofsydney.nsw.gov.au">planningsystemsadmin@cityofsydney.nsw.gov.au</a></p>  |
| 4.   | <b>Developer's Representative</b> | <p>Name: James Milligan</p> <p>Address: 321 Riley Street Surry Hills NSW 2010</p> <p>Email: <a href="mailto:james@milligangroup.com.au">james@milligangroup.com.au</a></p>   |
| 5.   | <b>Development Application</b>    | Means any development application submitted to the City in connection with the Development.  |
| 6.   | <b>Guarantee Amount</b>           | A total amount equal to the attributed value of the Public Art specified in Schedule 3   |
| 7.   | <b>Guarantee Amount Due Date</b>  | Prior to the issue of the first Construction Certificate   |

## 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><b>Planning instrument and/or development application</b><br/>(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) Yes</p> <p>(c) No</p>  |
| 2.   | <p><b>Description of land to which this document applies</b> (section 7.4(3)(a) of the Act)</p>  | Item 1 of Schedule 1.  |
| 3.   | <p><b>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies</b> (section 7.4(3)(b) of the Act)</p>   | The environmental planning instrument as described in clause 2.1.                                  |
| 4.   | <p><b>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</b><br/>(section 7.4(3)(c) of the Act)</p>  | Schedule 3   |
| 5.   | <p><b>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</b> (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.   | <b>Applicability of section 7.11 of the Act</b> (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.   | <b>Consideration of benefits under this document if section 7.11 applies</b> (section 7.4(3)(e) of the Act)  | No consideration because there is no application of section 7.11 of the Act.   |
| 8.   | <b>Mechanism for Dispute Resolution</b> (section 7.4(3)(f) of the Act)   | Clause 11  |
| 9.   | <b>Enforcement of this document</b> (section 7.4(3)(g) of the Act)   | Clause 10  |
| 10.  | <b>No obligation to grant consent or exercise functions</b> (section 7.4(9) of the Act)  | Clause 2.4   |
| 11.  | <b>Registration of this document</b> (section 7.6 of the Act)  | Clause 9   |
| 12.  | <b>Whether certain requirements of this document must be complied with before a construction certificate is issued</b> (clause 25E(2)(g) of the Regulation)          | Payment of the Monetary Contribution; Submission of the Environmental Performance Commitment and Detailed Public Art Plan; and Provision of the Bank Guarantee   |
| 13.  | <b>Whether certain requirements of this document must be complied with before a subdivision certificate is issued</b> (clause 25E(2)(g) of the Regulation)           | Not applicable   |
| 14.  | <b>Whether certain requirements of this document must be complied with before an occupation certificate is issued</b> (clause 25E(2)(g) of the Regulation)           | Creation of the Easement;<br>Completion of the Public Art Contribution;<br><br>Confirmation that the project is a Green Star registered project; and<br><br>Confirmation that the project is on track to comply with the Green Star rating proposed. |
| 15.  | <b>Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document</b> (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

| <b>Item</b> | <b>Public Benefit</b>                          | <b>Attributed Value</b>                   | <b>Due date</b>   | <b>Additional specifications</b>  |
|-------------|--|---|---|---|
| 1.          | Community Infrastructure Contribution          | 3% of the total cost of the Development   | 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. | This amount is inclusive of all infrastructure contributions applicable under Sections 7.11 and 7.12 of the Act.  |
| 2.          | Through-site Link (easement for public access) | Nil                                       | On or before the date of issue of the first Occupation Certificate for the Development applicable to the part of the Land on which the Through-site Link is constructed.  | Creation of a pedestrian through-site link connecting Pitt Street to Hunter Street in accordance with the Development Control Plan. The through-site link will be secured by an easement and positive covenant for public access registered on the land title. The specific details of the through-site link will be subject to detailed design development which will be supported by an easement plan clearly outlining the parameters. |
| 3.          | Public Art Contribution                        | 0.5% of the total cost of the Development | On or before the date of issue of the first Occupation Certificate for that portion of the Development  | The Public Art will be consistent with the Guidelines for Site Specific Planning Proposals in Central Sydney  |

|   |                                       |     |   |   |
|---|---------------------------------------|-----|---|---|
|   |                                       |     | containing the Public Art.  |   |
| 4 | Environmental Performance Initiatives | Nil | <p>Within 12 months after issue of the final Occupation Certificate</p> <p>Within 12 months after issue of the final Occupation Certificate</p> <p>Prior to the issue of the first Occupation Certificate (if a timber hybrid structure is approved in a development consent)</p> | <p>6 star Green Star Buildings V1 certified Rating or if that standard has been updated or replaced, a commensurate rating under the updated or replacement standard.</p> <p>A minimum 5.5 star NABERS energy rating;<br/>A minimum 4 star NABERS water rating;<br/>A minimum 5 star NABERS waste rating;</p> <p>Integration of a timber hybrid structure in the Development (if applicable to the successful design excellence competition scheme)</p> |

## 2. PAYMENT OF MONETARY CONTRIBUTION

### 2.1 Payment

The Developer must pay the Monetary Contribution to the City on the due dates stated in Items 1 and 2 in the table in clause 1 of Schedule 3 in cash or by electronic funds transfer or unendorsed bank cheque.

### 2.2 Indexation

- (a) If the Infrastructure Contribution is not paid to the City on the date of this document, then at the date of payment the Infrastructure Contribution must be indexed as follows:

**Infrastructure Contribution (to be provided) =**

**Infrastructure Contribution (as per item 1 of clause 1 above) x  
(A/B)**

where:

- A** is the Index Number most recently published before the date the Infrastructure Contribution is to be paid
- B** is the Index Number most recently published before the date this agreement commenced in accordance with clause 3.1 of this document.

If after the formula is applied the Infrastructure Contribution will be less than the amount stated in item 1 of clause 1 above, the Infrastructure Contribution will not be adjusted.

### 2.3 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 Monetary Contribution, the City is not required to separately account for the Monetary Contribution, report to the Developer regarding expenditure of the Monetary Contribution or comply with any request by the Developer to trace the Monetary Contribution.

### 2.4 Expenditure by the City

#### **Infrastructure Contribution**

The City will use the 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. **EASEMENT FOR THROUGH SITE LINK**

- (a) The Landowner consents to the registration of the Easement on the title of the Land. When requested by the Developer, the Landowner must execute the Easement at Annexure A and then deliver the Easement to the City for execution.
- (b) The City must execute and deliver the Easement to the Developer as soon as reasonably practicable following receipt of the Easement under sub clause 3(a).
- (c) The Developer must register the Easement after completion of the works comprising Item 2 of clause 1 of Schedule 3, but before the issue of the relevant Occupation Certificate for the Development.
- (d) If requested by the Developer, the City and the Landowner must do all things reasonably necessary to enable registration of the Easement.

## 4. **DEVELOPER'S WORKS**

Not used

## 5. **PUBLIC ART**

### 5.1 Preliminary Public Art Plan

- (a) Following the Design Excellence Competition and prior to the submission of a Development Application for the Development, the Developer must develop and submit a Preliminary Public Art Plan (Preliminary Plan) to the City for approval. The Preliminary Plan must:
  - (i) be based on the approved Public Art Strategy;
  - (ii) be in accordance with the City's Guidelines for Public Art in Private Development;
  - (iii) include a clear outline for the procurement of artists to deliver the Public Art; and
  - (iv) identify the intended location and ownership of the Public Art.
- (b) If the Developer intends that the Public Art will be located on City Land, the City may:
  - (i) elect to accept ownership of the Public Art;
  - (ii) elect not to accept ownership of the Public Art and instead require the Developer to enter into an agreement for the Public Art installation, which may be either:
    - (A) a licence agreement for the Public Art which is installed on land classified as operational or community (including public reserves and Crown land); or
    - (B) a consent granted under the Roads Act 1993 for the Public Art which is installed on a roadway or footpath.
- (c) The parties agree that further design refinement to the Preliminary Plan may be necessary, having regard to:
  - (i) the extent to which the Preliminary Plan has been approved by the City;
  - (ii) conditions affecting the Preliminary Plan that were not reasonably capable of identification prior to the date of this document;
  - (iii) any conditions of any Development Consent granted that relates to the Development; and
  - (iv) the reasonable requirements of the City, including in regard to the Standards.

## 5.2 Detailed Public Art Plan

- (a) Prior to the issue of the first Construction Certificate for above ground works of the Development, the Developer must submit to the City's Representative for approval:

- (i) a Detailed Public Art Plan (Detailed Plan) based on the approved Preliminary Plan, and in accordance with the City's Guidelines for Public Art in Private Development; and
  - (ii) a detailed budget included in the Detailed Plan setting out the estimated cost of the Public Art.
- (b) Within 20 Business Days after the City's Representative has received the Detailed Plan including the detailed costs estimate, the City will inform the Developer in writing as to whether the Detailed Plan and costs estimate are approved. If the Detailed Plan or costs estimate are not approved, the City will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the required information, following which the process outlined in this clause 5.2 will apply again.
- (c) Regarding the costs estimate, the Developer agrees that the City acting reasonably may:
- (i) require substantiation for the costs of items where the amount estimated is considered by the City to be excessive;
  - (ii) require an adjustment to the costs estimate to reflect a variation to the design required under this clause 5.2(c).
- (d) If the Developer:
- (i) fails to prepare the Detailed Plan or detailed costs estimate; or
  - (ii) does not provide further information or modify the Detailed Plan or detailed costs estimate,
- in accordance with this clause 5.2, then the City may exercise its rights under clause 10 of this document in order to carry out the Public Art itself at the cost of the Developer.
- (e) The Developer agrees that the scope of the Public Art may be adjusted following completion of the process set out in this clause 5.2

### 5.3 Preparation of and changes to the Detailed Plan

If the Public Art is to be installed on City Land:

- (a) Following approval of the Detailed Plan by the City in accordance with clause 5.2, the Developer must promptly:
  - (i) prepare construction design drawings that comply with the Detailed Plan; and
  - (ii) provide the City with a copy of the construction design drawings.
- (b) The City, acting reasonably, may by written notice to the Developer at any time, approve, vary or direct the Developer to vary the construction design drawings so that the Developer's Works reflect:

- (i) the Standards;
  - (ii) a departure or discrepancy from the Plans approved under this clause 5; or
  - (iii) any other standard or specification for materials or methodology for carrying out works that is adopted by the City from time to time, provided that any direction given under this clause 5.3(b) does not significantly increase:
    - (A) the cost of that element of the Public Art; or
    - (B) the complexity of implementation of the Public Art that may lead to a significant delay in the completion of the Public Art.
- (c) Within 20 Business Days of receiving a notice from the City under clause 5.3(b), the Developer must:
- (i) to the extent practicable, use reasonable endeavours to comply with the notice given by the City; or
  - (ii) if the Developer determines that the notice given by the City is unreasonable or impracticable, notify a dispute in accordance with clause 11 of this document.

If the Developer does not provide any response during the 20 Business Days after receiving a notice from the City under clause 5.3(b) it is deemed that the Developer accepts the notice given by the City and will take all steps required to comply with the notice.

- (d) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under this clause 5 or for any errors, omissions or non-compliance with this document.
- (e) No participation by the City in the development of, the review of, or comments on any design drawings submitted by the Developer will lessen or otherwise affect the Developer's obligations under this document or constitute an acknowledgement by the City that the Developer has complied with its obligations under this document.

For the avoidance of doubt this clause 5.3 only applies to Public Art which the City has elected to accept ownership of, or which is to be installed on City Land subject to an agreement between the City and the Developer.

This clause is not required if the Public Art is to be installed on private land.

## 6. **CONSTRUCTION AND INSTALLATION OF PUBLIC ART**

### 6.1 Insurance

- (a) From commencement of the construction and installation of the Public Art until expiration of the Defects Liability Period, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured)

the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:

- (i) worker's compensation insurance or registrations as required by Laws;
  - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;
  - (iii) construction works insurance in relation to the Developer's Works; and
  - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the City:
- (i) prior to commencing construction and installation of the Public Art; and
  - (ii) promptly following a written request by the City, provided that such a request is not made more than twice in any 12 month period.

## 6.2 Approvals and consents

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

## 6.3 Construction/Installation of the Public Art

Prior to the issue of the Occupation Certificate for the Development the Developer must, at its cost:

- (a) carry out and complete the construction and installation of the Public Art in accordance with all approvals and consents relating to the Public Art, including any approval given by the City under this document;
- (b) ensure that the Public Art is constructed and installed in a good and workmanlike manner, in accordance with the Plans approved under this document, so that the Public Art is structurally sound, fit for purpose and suitable for its intended use;
- (c) ensure that the construction and installation of the Public Art is Complete by the due date specified in clause 1 of Schedule 3, and promptly after becoming aware advise the City's Representative of any significant delays in completing the construction and installation of the Public Art or delays

that may impact the delivery of the Public Benefits by the due date specified in Item 3 of Schedule 3; and

- (d) comply with all reasonable directions of the City in respect of the construction and installation of the Public Art.

#### 6.4 Inspections by the City

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

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

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

### 7. **ENVIRONMENTAL PERFORMANCE INITIATIVES**

#### 7.1 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, 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 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 4 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 by providing written confirmation that prior to the issue of the first Occupation Certificate:
  - (i) the project is a Green Star registered project.



- (ii) the project is on track to comply with the Green Star rating proposed.

## 7.2 Environmental Performance Initiatives Guidelines

The following list of Guidelines are included for information purposes only for the general nature of the work identified as Environmental Performance Initiatives in this document. The City makes no representation or warranty as to the currency and completeness of the guidelines identified, or their application on the final design of the Environmental Performance Initiatives. The Developer must make its own enquiries regarding whether any guideline has been replaced or supplemented.

- Factsheet 4: Preparing for NABERS office rating applications prepared by NSW Office of Environment and Heritage, published August 2011
- Factsheet 5: Preparing for NABERS hotel rating prepared by NSW Office of Environment and Heritage, published September 2014
- Factsheet 7: The NABERS Energy Commitment Agreement prepared by NSW Office of Environment and Heritage, published July 2014;
- Guidelines for the use of simulation in Commitment Agreements prepared by NSW Office of Environment and Heritage, version 2011-June
- NABERS Guide to Building Energy Estimation, prepared by NSW Office of Environment and Heritage, published June 2011
- NABERS Guide to Tenancy Energy Estimation, prepared by NSW Office of Environment and Heritage, published June 2011
- Rules for collecting and using data (formerly titled Validation Protocol) version 3.0, February 2013, prepared by NSW Office of Environment and Heritage.
- City of Sydney Sustainable Design Technical Guideline.

## 8. **STANDARDS**

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

### **Relevant Australian Standards – Verge Works, Through site links**

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers

- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 1743 Road signs
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1428 Design for Access and Mobility
- AS 4454 Composts, soil conditioners and mulches

**Relevant Australian Standards – Roads (including pedestrian areas)**

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1742 Manual of uniform traffic control devices
- AS 1743 Road Signs

**City Standards (All Works)**

- City of Sydney Contaminated Lands DCP 2004
- Sydney Street Code 2013
- Sydney Lights Code 2013

- City of Sydney Access Policy
- Sydney Street Technical Specification and Drawings
- City of Sydney Street Tree Master Plan 2011
- Interim Guidelines for Public Art in Private Developments
- Public Art Policy
- City Art Public Art Strategy

**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

**SIGNED BY DEVELOPER**

**EXECUTED BY MILLIGAN GROUP  
PTY LTD** (ACN 157 854 816) in  
accordance with s127(1) of the  
Corporations Act 2001 (Cth):

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director /Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_

\_\_\_\_\_

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**ANNEXURE A DRAFT TERMS OF EASEMENT FOR THROUGH-SITE LINK**

**Plan:**

Plan of easement and positive covenant over

**Full name and address of the owners of the land:** [to be inserted]

**Part 1 (Creation)**

| Number of item shown in the intention panel on the plan | Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.        | Burdened lot(s) or parcel(s): | Benefited lot(s), road(s), bodies or Prescribed Authorities: |
|---|--|-------------------------------|--|
| 1   | Easement for public access variable width limited in height and depth [ <b><i>#insert consistent with final plan</i></b> ] | To be inserted                | The Council of the City of Sydney                            |
| 2   | Positive Covenant (Public Access)  | To be inserted                | The Council of the City of Sydney                            |

## Part 2 (Terms)

### 1. Interpretation

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#### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**Authorised User** means every person authorised by the Council or the Owner of the Lots Benefited for the purposes of the Easement created by this Instrument. Subject to the terms of the Easement, an Authorised User includes the employees, agents, servants, contractors, workers, licensees and invitees of the Council or the Owner of the Lots Benefited. Where the Easement benefits the Council or the Council is the owner of the Lot(s) Benefited, an Authorised User includes members of the public.

**Council** means The Council of the City Sydney, its successors and any other body serving the same or similar function.

**Easement** means the easements, restrictive covenant or positive covenants in this Instrument and includes the conditions in relation to that Easement.

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

**Emergency Situation** means any circumstance involving a need, for reasons of health, safety or security, for evacuation or egress from a building or other place or restriction of access, including fire, earthquake, flooding terrorist activity and any training or test of such evacuation or egress.

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

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

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

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

**Owner** means every person who is at any time entitled to an estate in a lot referred to in Part 1 of this Instrument as registered proprietor or mortgagee in possession.

**Plan** means the plan registered together with this Instrument.

**Required Credit Rating** means a long-term credit rating of at least A- by Standard and Poor's (or equivalent rating).



## 1.2 Interpretation

In this Instrument:

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

## 1.3 Headings

Headings do not affect the interpretation of this Instrument.

## 1.4 Positive covenants and maintenance requirements

A requirement in an Easement which requires a Grantee or Grantor to maintain or repair an Easement Site or anything in an Easement Site is a positive covenant according to section 88BA of the Act.

## 1.5 Severability

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

## 2. **Terms of Easement for Public Access Variable Width Limited in HEIGHT AND DEPTH [#insert (if applicable)] numbered one in the Plan**

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### 2.1 Grant

Subject to the Grantor's rights under clauses 2.3 to 2.5, the Grantor grants to the Council and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times:

- (a) on foot; and/or
- (b) with wheelchairs or other disabled access aids, bicycles, tricycles or similar non-motorised machines (being walked or ridden), but excluding all other vehicles; and/or
- (c) with or without animals,

for all lawful purposes.

## **2.2 Purpose of the Easement**

The Council and the Grantor acknowledge that the Easement is being provided at no cost to the public and is for the purpose of providing reasonable access over the Easement Site to any member of the public in accordance with and subject to the provisions of this Easement.

## **2.3 Requirements when exercising rights**

When exercising its rights and complying with its obligations under this easement, the Council must (and must ensure its Authorised Users (excluding members of the public)) take all reasonable steps:

- (i) to minimise inconvenience, disturbance or damage to the Grantor, the Lot Burdened and any occupier of the Lot Burdened; and
- (ii) to cause as little damage as is practicable to the Lot Burdened and any improvements on it; and
- (iii) if damage is caused by the Council (or its Authorised Users (excluding members of the public)), restore the Lot Burdened as nearly as practicable to the condition it was in before the damage occurred, as soon as reasonably possible.

## **2.4 Grantor may restrict access**

Council and its Authorised Users may not exercise their rights under clause 2.1 of this easement:

- (i) during any period in which the Grantor is entitled to restrict access over the Easement Site in accordance with clause 2.5; and
- (ii) during reasonable times notified by the grantor of the Positive Covenant (Public Access) numbered (2) in the Plan to Council to enable the grantor of the Positive Covenant (Public Access) numbered (2) in the Plan to comply with its obligations under the Positive Covenant (Public Access) numbered (2) in the Plan.

## **2.5 Restrictions on access**

Without limiting the Grantor's rights under clauses 2.4 and 2.6, the Grantor may temporarily close, or temporarily restrict, public access to the Easement Site under this easement:

- (a) for the purposes of, or as as result of the repair, maintenance or refurbishment of any improvement on the Lot Burdened, provided that:
  - (i) such restriction is for a period not exceeding one month (or such longer period of time as agreed by Council from time to time);
  - (ii) where the restriction is for a period not exceeding 24 hours, reasonable steps are taken to minimise the disturbance caused in accordance with rights granted under clause 2.1; and
  - (iii) where the restriction is likely to be for a period for between 24 hours and up to one month, the Grantor:
    - (A) obtains the prior written consent of the Council and complies with any conditions imposed on that consent (such consent not to be unreasonably withheld); and
    - (B) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1.
- (b) when reasonably necessary to prevent the use of the Easement Site by members of the public in a manner that gives rise to a hazard or nuisance; or
- (c) for any other purpose provided the Grantor:
  - (i) obtains the prior written consent of the Council and comply with any conditions imposed on that consent (such consent not to be unreasonably withheld); and
  - (ii) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1.

## **2.6** Emergencies

- (a) The Grantor may temporarily restrict access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Council and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible.
- (b) The Council or the Grantor may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public under this easement if either of them reasonably forms the view that such access is unsafe.
- (c) Despite any other provision of this instrument:
  - (i) the Grantor must at all times allow the Easement Site to be used for access by all emergency and other essential service organisations in connection with an Emergency Situation; and
  - (ii) the Grantor must not interfere with such access.

## **2.7** Inspection

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

## **2.8** Name of the person or Authority empowered to release or vary or modify any or all of the Easement numbered one in the Plan:

The Council of the City of Sydney

### **3. Terms of Positive Covenant (Public Access) numbered two in the Plan**

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#### **3.1 Maintenance of Easement Site**

The Grantor must:

- (a) at all times, maintain the Easement Site (including any lighting) in good condition and state of repair; and
- (b) not permit the Easement Site to become unsafe; and
- (c) keep the Easement Site clean and free from rubbish.

#### **3.2 Public Liability Insurance**

- (a) The Grantor must take out and maintain or procure the taking out and maintenance of a public liability insurance policy with respect to any liabilities to Council or to any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by Council (acting reasonably).
- (b) The policy referred to in clause 3.2(a) must:
  - (i) note Council as an interested party; and
  - (ii) be taken out and maintained with reputable insurers which at all times hold at least the Required Credit Rating.

#### **3.3 Indemnity**

The Grantor indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council or any of its Authorised Users under Easement for Public Access numbered One on the Plan, except to the extent that the claim or damage is caused by or contributed to by, the wilful or negligent act or omission of the Council or any of its Authorised Users (excluding any member of the public).

#### **3.4 Person empowered to release, vary or modify the Positive Covenant numbered two in the Plan:**

This Positive Covenant may only be released, varied or modified with the consent of the Council of the City of Sydney.

EXECUTION PAGE

**Executed by Council of the City of Sydney**

**EXECUTED** by **The Council of the City of** )  
**Sydney ABN 22 636 550 790** by its )  
attorney under power of attorney )  
registered book )  
in the presence of: )

..... )  
Signature of witness )

..... )  
Signature of Attorney )

..... )  
Name of witness (block letters) )

..... )  
Name of Attorney )

