

Attachment C

Voluntary Planning Agreement

Planning agreement

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

The Trust Company (Australia) Limited ACN 000 000 993 as
custodian of Bieson Pty Ltd ACN 110 465 168 as trustee of the
383 Kent Street Landowning Trust

For 383 Kent Street, Sydney NSW 2000

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THIS PLANNING AGREEMENT is made on

2024.

BETWEEN:

- (1) **The Council of the City of Sydney** ABN 22 636 550 790 of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **The Trust Company (Australia) Limited** ACN 000 000 993 as custodian of **Bieson Pty Ltd** ACN 110 465 168 as trustee of 383 Kent Street Landowning Trust of Level 20, 1 Martin Place, Sydney NSW 2000 (the **Developer**).

BACKGROUND

- (A) The Developer is the owner of the Land and intends to undertake the Development on the Land.
- (B) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

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

Building Contract means the building contract pursuant to which the Logistics Hub is constructed.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Policies means all policies and procedures relevant to the provision of the Public Benefits, as notified by the City in writing to the Developer.

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

Commercial Premises means any of the following:

- (a) business premises;
- (b) office premises; and
- (c) retail premises.

Completion means the point at which:

- (a) practical completion of the Logistics Hub is achieved under the Building Contract; and
- (b) the Developer has obtained and submitted all Occupation Certificate(s) for the Logistics Hub to the City.

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.

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

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

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

Defects Liability Period means in relation to the Public Benefits, the period of 12 months from the date that Completion is achieved.

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

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 for the Development and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Easement for Public Access and Positive Covenant means an easement for public access and positive covenant burdening the Land and benefiting the City on the terms specified in Annexure B.

Environmental Commitments means those parts of the Public Benefit described as "Environmental Commitments" in clause 6 of Schedule 3, to be delivered by the Developer in accordance with this document.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

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

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Green Star Buildings means the sustainability rating tool for new buildings that is managed by the Green Building Council of Australia.

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 a bank guarantee (or bank guarantees) or documentary performance bond for the Guarantee Amount which must:

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

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

Guarantee Amount 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 of this document.

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

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;

- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property;
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

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

Instrument Change means an amendment to the *Sydney Local Environment Plan 2012* in accordance with the Planning Proposal.

Instruments means the instruments required to create:

- (a) the Easement for Public Access and Positive Covenant; and
- (b) the Logistics Hub Affectations.

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.

Logistics Hub means those parts of the Public Benefit described as "Logistics Hub" in the table in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

Logistics Hub Affectations means:

- (a) a public positive covenant under section 88E of the Conveyancing Act burdening the Land and benefiting the City imposing obligations on the owner of the Land from time to time in relation to the operation and maintenance of the Logistics Hub consistent with the Plan of Management

and otherwise on terms and conditions acceptable to the Developer and the City both acting reasonably; and

- (b) a right of carriageway or rights of carriageway benefiting the City and enabling the public to access and use the Logistics Hub on terms required by the City acting reasonably.

NABERS mean the National Australian Built Environment Rating System that measures the environmental performance of Australian buildings and tenancies and is managed nationally by the NSW Department of Planning, Housing and Infrastructure.

Occupation Certificate has the same meaning as in the Act.

Operational means that:

- (a) any (and all) Defects affecting the Logistics Hub as at the date that Completion was reached have been rectified; and
- (b) the Logistics Hub is capable of immediate and convenient use for its intended purpose,

as determined under clause 6.5(a) or clause 11 (as relevant).

Operational Notice means a notice issued by the Developer in accordance with clause 6.4.

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.

Plan of Management means a plan of management for the establishment, ongoing use, management and maintenance of the Logistics Hub as referred to in Annexure A.

Planning Proposal means the planning proposal for the Land which for the Land which received Gateway Determination from the Department of Planning, Housing and Infrastructure on 30 August 2024 (PP-2024-408).

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

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

Regulation means the *Environmental Planning and Assessment Regulation 2021* (NSW).

Standards means the policies, procedures and standards for carrying out the Logistics Hub, listed at clause 5 of Schedule 3.

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.

WELL means the building standard for creating and certifying spaces that advance human health and well-being and is managed by the International WELL Building Institute.

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” and a reference to **include** means “include, 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**

This document will commence on the date of execution of this document by all parties to this document.

4. **WARRANTIES**

4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) **(no controller)** no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 **Developer warranties**

- (a) The Developer warrants to the City that, at the date of this document:
 - (i) it is the registered proprietor of the Land;
 - (ii) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;

- (iii) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Developer's size and experience; and
 - (iv) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (b) The Developer warrants to the City that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

5. **PUBLIC BENEFITS**

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

6. **COMPLETION**

6.1 **Date of Completion**

The Developer must ensure that the Logistics Hub reaches Completion on or before the date or milestone referred to in paragraph 1(a) of the table in clause 1 of Schedule 3 of this document.

6.2 **Developer Completion Notice**

- (a) When, in the reasonable opinion of the Developer, construction of the Logistics Hub is about to reach Completion, the Developer must notify the City's Representative in writing, with such notice to include a statement from the superintendent under the Building Contract that in their opinion the Logistics Hub is about to reach Completion (**Completion Notice**).
- (b) The City must procure that the City's Representative inspects the Logistics Hub within 5 Business Days of the date that the Completion Notice is received by the City. Within 5 Business Days of the date of the inspection by the City's Representative, the City may (acting reasonably) notify the Developer in writing if any of the requirements in the following clauses of Annexure A have not been met:
 - (i) clause 1(a);
 - (ii) clause 1(c); and
 - (iii) clause 1(h).
- (c) If a notice is issued by the City pursuant to clause 6.2(b), the Developer must promptly take all action required to meet the relevant requirements.
- (d) If the Developer disputes a notice served by the City pursuant to clause 6.2(b), such dispute will be resolved pursuant to clause 11.

6.3 **Logistics Hub becomes Operational**

The Developer must ensure that the Logistics Hub is Operational on or before the date or milestone referred to in paragraph 1(c) of the table in clause 1 of Schedule 3 of this document.

6.4 **Operational Notice**

When, in the reasonable opinion of the Developer, the Logistics Hub is about to become Operational, the Developer must notify the City's Representative in writing, with such notice to include:

- (a) a statement from the Developer that in the Developer's opinion the Logistics Hub is about to become Operational;
- (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to confirm that the Logistics Hub is Operational; and
- (c) one set of the "as built" drawings of the Logistics Hub in electronic format, **(Operational Notice)**.

6.5 **Inspection by the City**

- (a) The City must procure that the City's Representative inspects the Logistics Hub within 5 Business Days of the date that the Operational Notice is received by the City. Within 5 Business Days of the date of the inspection by the City's Representative, the City must (acting reasonably) by written notice to the Developer:
 - (i) state that the Logistics Hub is Operational;
 - (ii) state that the Logistics Hub is not Operational and, if so, identify the Defects, errors or omissions which, in the reasonable opinion of the City's Representative, prevent the Logistics Hub from becoming Operational; or
 - (iii) issue a notice under clause 6.7(a).
- (b) If the Developer disputes a notice issued by the City pursuant to clause 6.5(a), such dispute will be resolved pursuant to clause 11.
- (c) Nothing in this clause 6.5, or any notice issued under this clause 6.5, will:
 - (i) reduce or waive in any manner the Developer's responsibility to:
 - (A) deliver the Logistics Hub 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 Logistics Hub.

6.6 Environmental Commitment Notice

When, in the reasonable opinion of the Developer, the Environmental Commitments have been achieved, the Developer must notify the City's Representative in writing and must include in that notice evidence that the NABERS rating for energy and water has been achieved.

6.7 Non-completion of Public Benefits

- (a) If the Developer makes a request by notice in writing not to complete the Public Benefits (or any part of the Public Benefits):
 - (i) the City may permit the Developer not to complete the Public Benefits (or any part of the Public Benefits) by issuing a notice in writing to the Developer stating that completion of the items identified in that notice is not required to fulfil the Developer's obligations under this document; and
 - (ii) the City may make a claim on the Guarantee in such amount as the City considers necessary to complete the portion of Public Benefit not being delivered by the Developer.
- (b) If the Developer fails to complete the whole of the Public Benefits in the form and to the standards required under the Development Consent or this document then the City may:
 - (i) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document; and/or
 - (ii) by written notice, require the Developer to pay to the City within 20 Business Days after the date of service of the notice, the costs expended by the City to provide alternative facilities in the vicinity of the Land equivalent to the Logistics Hub.

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 to the extent the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).

8. DEFECTS LIABILITY

8.1 Security for Defects Liability Period

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

8.2 **Defect in the Public Benefits**

- (a) If:
 - (i) the Developer is in breach of clause 4.2 of this document; or
 - (ii) the City notifies the Developer of a Defect in the Public Benefits within the Defects Liability Period,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 Guarantee in accordance with clause 10 for the reasonable costs of the City in rectifying the Defect; and
 - (iii) to the extent the costs incurred to rectify the Defect exceeds the Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the City.
- (c) If the City requires access to the 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**

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 title to the Land;
 - (ii) warrants that it has obtained all consents to the registration of this document on the title to the Land; and
 - (iii) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the certificate of title to the Land, including:
 - (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 payment for registration, electronic lodgement and requisition fees (where applicable) required for registration of this document at NSW Land Registry Services.

- (b) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

9.2 Release of this document

- (a) If the City is satisfied that the Developer has provided all Public Benefits and otherwise complied with this document then the City must promptly do all things reasonably required to remove this document from the certificate of title to the Land.
- (b) The Developer must, within 10 Business Days of a written request from the City, do all things necessary to allow the City to comply with clause 9.2(a), including:
 - (i) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and
 - (ii) providing the City with payment for registration, lodgement and requisition fees (where applicable) required for removal of this document from title to the Land by NSW Land Registry Services.

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 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 3.2 of Schedule 3 of this document;
 - (ii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.7(a)(ii);
 - (iii) an Insolvency Event occurs in respect of the Developer;
 - (iv) the Developer fails to deliver the Public Benefits in accordance with clause 6.7(b);
 - (v) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document;
 - (vi) the detailed designs for the Developer's Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;

- (vii) the Developer's Works do not reach Completion within 36 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed by the City in writing);
 - (viii) the Developer fails to maintain the Developer's Works in accordance with clause 5.2 and Annexure A; or
 - (ix) the City incurs any other expense or liability in exercising its rights and powers under this document.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.2 must be applied only towards the costs and expenses incurred by the City rectifying any default by the Developer under this document.

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

- (a) If the City calls upon the Guarantee in accordance with this clause 10 then the Developer must immediately provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with clause 10.3(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 agreed in accordance with clause 6.5(a)(i) of this document that the Logistics Hub has become Operational, taking into account any approved non-completion of Public Benefits approved by clause 6.7(a) of this document;
 - (iii) the City has been provided with the security for the Defects Liability Period in accordance with clause 8.1,
- the City will promptly return the Guarantee to the Developer following the issue of a notice pursuant to clause 6.5(a)(i) of this document.
- (c) If, following expiry of the Defects Liability Period, the City is satisfied that all defects have been rectified in accordance with clause 8, The City must promptly return to the Developer the portion of the Guarantee retained by the City as security for the Defects Liability Period.

11. **DISPUTE RESOLUTION**

11.1 **Application**

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

11.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the City's Representative for resolution. The Dispute Notice must:

- (i) be in writing;
- (ii) state that it is given pursuant to this clause 11; and
- (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Developer's Representative and the City's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the City's Representative may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.

11.3 **Not use information**

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 11 is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process undertaken under this clause 11 for any purpose other than in an attempt to settle the Dispute.

11.4 **Condition precedent to litigation**

Subject to clause 11.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

11.5 **Summary or urgent relief**

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

12. TAXES AND GST

12.1 Responsibility for Taxes

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 12.1(a).

12.2 GST free supply

To the extent that Divisions 81 and 82 of the GST Act apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

12.3 Supply subject to GST

To the extent that clause 12.2 does not apply to a supply made under this document, this clause 12.3 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 12.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 12.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 12.3.

- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

13. DEALINGS

13.1 Dealing by the City

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

13.2 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 9, the Developer must not Deal with this document or the Land without the City, the Developer and the third party the subject of the Dealing first entering into a deed of consent to the Dealing on terms acceptable to the City (acting reasonably), pursuant to which the third party the subject of the Dealing agrees to comply with this document.
- (b) On and from registration of this document in accordance with clause 9:
 - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land;
 - (ii) the Developer may register a plan of strata 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 (not to be unreasonably withheld); and
 - (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City (acting reasonably) whereby the incoming owner agrees to comply with this document.

- (c) On provision of an itemised invoice by the City, the Developer must pay the City's reasonable costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.

14. **TERMINATION**

- (a) Either party may terminate this document by notice in writing to the other party if:
 - (i) the Instrument Change does not come into force within 36 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.
- (b) If this document is terminated in accordance with clause 14(a):
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss each party may suffer as a result of the termination of this document; and
 - (iii) the City will, at the Developer's cost, do all things reasonably required to remove this document from the title to the Land in accordance with clause 9.2.

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, investor, financier 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.
- (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 except in relation to material in board papers or otherwise required to be maintained under Laws.

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**

Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Developer:

- (a) 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
- (b) must in the delivery of the Public Benefits and the performance of all its other obligations under this document comply with the Privacy Laws and must not do any act or engage in any practice that would breach the Privacy Laws or which if done or engaged in by the City would be a breach of any Privacy Laws.

16. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

17. **MODERN SLAVERY**

- (a) In this clause:

- (i) **Engaged Entities** means any first tier (direct) suppliers, subcontractors, consultants and contractors engaged by a party in connection with this document;
 - (ii) **Grievance Mechanism** means a process for handling a complaint or grievance about Modern Slavery that is consistent with the criteria set out in Principle 31 of the 2011 United Nations Guiding Principles on Business and Human Rights;
 - (iii) **Modern Slavery** has the meaning given to it in section 4 of the Modern Slavery Act;
 - (iv) **Modern Slavery Act** means the *Modern Slavery Act 2018* (Cth);
 - (v) **Modern Slavery Laws** means all applicable modern slavery laws, statutes, regulations and codes from time to time in force which prohibit the exploitation of workers, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services or similar, including but not limited to the Modern Slavery Act and the *Modern Slavery Act 2018* (NSW);
 - (vi) **Reasonable Steps** includes:
 - (A) obtaining awareness of what constitutes and the Modern Slavery and the Modern Slavery Laws in Australia;
 - (B) undertaking activities to identify and address Modern Slavery risks in the Developer's operations and supply chain (including adherence to Australian labour laws, conducting a Modern Slavery risk assessment and implementing a Modern Slavery policy);
 - (C) consulting with the Developer's Engaged Entities to identify and mitigate Modern Slavery risks in its supply chain and labour force, including by implementing policies and procedures that reject the exploitation of migrant workers;
 - (D) providing training necessary to identify Modern Slavery risks, risk management and remediation procedures to Personnel; and
 - (E) having regard to any policy, direction or document released by the New South Wales Office of the Anti-Slavery Commissioner from time to time.
- (b) The Developer must:
- (i) not cause or contribute to Modern Slavery or engage in any activity, practice or conduct that constitutes an offence under Modern Slavery Laws or that would constitute an offence if such activity, practice or conduct were carried out in Australia;

- (ii) take Reasonable Steps (having regard to the size, nature and industry of the Developer's business) to identify, assess and address Modern Slavery risks within its operations and supply chains;
 - (iii) comply with any request from the City to provide any information necessary to enable the City to comply with its obligations under the Modern Slavery Laws and undertake any due diligence on the Developer's supply chains as required;
 - (iv) ensure that it and its Engaged Entities pay its Personnel at least the minimum wage and other entitlements as required by Law;
 - (v) cooperate in good faith with the City in investigating the circumstances relevant to any potential, suspected or actual breach of any Modern Slavery Laws;
 - (vi) ensure access to an effective Grievance Mechanism for any Personnel within its operations (including Personnel of its Engaged Entities);
 - (vii) provide access to documentation and information as reasonably required by the City to verify the Developer's compliance with this clause 17(b); and
 - (viii) include in its contracts with any subcontractors or suppliers, Modern Slavery provisions that are at least as onerous as those set out in this clause 17.
- (c) Both parties agree:
- (i) to provide reasonable assistance to the other party to comply with this clause 17; and
 - (ii) to implement systems, procedures and policies as required to meet its obligations under this clause 17.
- (d) In the event of any potential, suspected or actual instances of Modern Slavery within its operations or supply chain, the Developer must:
- (i) notify the City in writing as soon as practicable with adequate particulars to enable the City to understand the potential, suspected or actual instances of Modern Slavery;
 - (ii) within 10 Business Days (or such other timeframe as agreed by the parties), prepare a suitable remediation plan that:
 - (A) outlines the steps that the Developer intends to take to remedy the issue along with an explanation as to how the proposed steps will resolve the issue;
 - (B) provides a timeframe for implementation and completion of these steps; and
 - (C) explains the quantitative/qualitative indicators that will determine when the issue has been resolved,

(**Remediation Plan**) for the City to review;

- (iii) amend the Remediation Plan to reflect reasonable additional direction provided by the City in relation to any feedback it gives on the Remediation Plan following its review; and
 - (iv) take all reasonable steps to ensure that the Remediation Plan is completed within the period determined by clause 17(d)(ii).
- (c) The City may give reasonable assistance to the Developer to prepare and/or implement a Remediation Plan where deemed appropriate.
- (d) The Developer must provide the City with evidence of the ongoing implementation of the Remediation Plan promptly upon request.
- (e) The parties agree that a breach of clause 17(b) or 17(b)(viii), or failing to use best endeavours to implement a Remediation Plan will be a material breach of this document (**Modern Slavery Material Breach**).
- (f) Where a Modern Slavery Material Breach is not capable of being remedied, or is otherwise not remedied within a reasonable timeframe as agreed by the parties, 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 clause 17.
- (g) The Developer represents and warrants that:
- (i) it has not, as of the date of this document, engaged in Modern Slavery or breached any Modern Slavery Laws;
 - (ii) it has disclosed to the extent that it is aware, any actual or reasonably suspected Modern Slavery within its own operations or the supply chain of any of its Engaged Entities and any actions taken to remedy the disclosed event;
 - (iii) any information provided to the City with respect to Modern Slavery as part of the City's procurement process is accurate, complete and not misleading and/or deceptive in any way; and
 - (iv) it has taken reasonable steps to ensure that any Engaged Entities engaged in connection with this document have complied and continue to comply with the obligations contained in this clause 17.

This clause 17 only applies to the delivery of the Public Benefit under this document.

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 as prescribed by regulation.
- (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.

19. **DEVELOPER LIMITATION OF LIABILITY**

[Note: Insert standard Limitation of Liability Provisions]

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Lot 1 in DP778342 known as 383 Kent Street, Sydney NSW 2000.
2.	Development	The redevelopment of the Land for a Commercial Premises that is permitted by the controls proposed in the Planning Proposal and subject to the resultant Instrument Change. The total Gross Floor Area for the Land is 73,202 square metres.
3.	City's Representative	Name: Director, Planning, Development and Transport Address: Level 1, 456 Kent Street, Sydney NSW 2000 Email: council@cityofsydney.nsw.gov.au Or such alternative representative nominated by the City from time to time and notified in writing to the Developer's Representative
4.	Developer's Representative	Name: Michael West Address: Level 20, 1 Martin Place, Sydney NSW 2000 Email: michael.west@charterhall.com.au Or such alternative representative nominated by the Developer from time to time and notified in writing to the City's Representative
5.	Development Application	Any and all development application(s) submitted to the City in connection with the Development.
6.	Guarantee Amount	\$375,000
7.	Guarantee Amount Due Date	Prior to the issue of a Construction Certificate permitting construction under the Building Contract.

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.	Planning instrument and/or development application (section 7.4(1) of the Act) The Developer has: (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a Development Application; or (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) Yes (b) Yes (c) No
2.	Description of land to which this document applies (section 7.4(3)(a) of the Act)	Item 1 of Schedule 1.
3.	Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)	The Development and/or the environmental planning instrument as described in clause 2.1.
4.	The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)	Schedule 3 and Annexure A.
5.	Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)	Section 7.11 not excluded Section 7.12 not excluded Section 7.24 not excluded

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
6.	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	The application of section 7.11 of the Act is not excluded in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits to the value of the aggregate of the Attributed Value for each element of the Public Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 11
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 10
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 9
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (section 205(2) of the Regulation)	Provision of the Guarantee
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (section 205(2) of the Regulation)	Not applicable
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (section 205(2) of the Regulation)	Completion of the Logistics Hub, registration of the Instruments and preparation of the Plan of Management (in a form approved by the City).
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (section 205(5) of the Regulation)	Clause 2.5

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS - OVERVIEW

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

	Public Benefit	Attributed Value	Relevant Due dates	Additional specifications
1.	Logistics Hub to be secured via a Development Consent as part of a future Development Application	Nil	(a) Completion of the Logistics Hub and Instruments registered within 30 days after the first Occupation Certificate for the Development. (b) Plan of Management approved prior to the issue of the first Occupation Certificate for the Development. (c) The Logistics Hub is to be Operational within 12 months of Completion.	Construction of a public loading dock and preparation of a Plan of Management (Refer to Annexure A). Registration of the Logistics Hub Affectations.
2.	Pedestrian Through-Site Link	Nil	On or before the date of issue of the last Occupation Certificate for the Development applicable to the part of the Land on which	Registration of the Easement for Public Access and Positive Covenant to allow access for the public at all times of the day and all days of the week generally to the dimensions and

	Public Benefit	Attributed Value	Relevant Due dates	Additional specifications
			the through-site link is constructed.	location as defined in the Sydney Development Control Plan 2012.
3.	Environmental Commitments - NABERS and WELL	Nil	To be issued within 6 months after 75% of the NLA of the commercial office building being occupied by tenants for continuous period of 12 months.	4 star NABERS water rating. 5 star NABERS waste rating. WELL Core Gold (Commitment Agreement). WELL Core Platinum 100% renewable energy in operation.
4.	Environmental Commitments – Green Star Buildings	Nil	To be issued within 24 months of completion of the Development.	6 star Green Star v1.0 certified rating including 20% embodied carbon reduction.

2. **INSTRUMENTS**

- (a) The Developer consents to the registration of the Instruments on the title of the Land, and must execute the Instruments and then deliver the Instruments to the City for execution.
- (b) The City must execute and deliver the Instruments to the Developer as soon as reasonably practicable following receipt of the Instruments under clause 2(a).
- (c) The Developer must register the Instruments after completion of the works comprising Items 1 and 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 must do all things necessary to enable registration of the Instruments including:
 - (i) lodging the Instruments via an electronic conveyancing system such as PEXA; and
 - (ii) responding to any requisitions raised by the NSW Land Registry Services in respect of the Instruments.

3. FINAL DESIGN OF THE LOGISTICS HUB

3.1 Scope of Logistics Hub

As at the date of this document, the nature and extent of the required Logistics Hub is set out in Annexure A to this document. The parties agree that further design refinement of the Logistics Hub may be necessary, having regard to:

- (a) the final design of the Logistics Hub as approved by the City pursuant to clause 3.2;
- (b) conditions affecting the Logistics Hub that were not reasonably capable of identification prior to the date of this document;
- (c) the extent of any refinement of the design of the Logistics Hub permitted by this clause 3.1 of Schedule 3;
- (d) any modification to the Development Consent made and approved under section 4.55 of the Act or any other development consent granted that relates to the Logistics Hub; and
- (e) the reasonable requirements of the City, including in regard to the Standards.

3.2 Final design of Logistics Hub

- (a) The Developer must submit the final design of the Logistics Hub to the City as part of the Development Application.
- (b) The parties agree that the review and approval of the final design of the Logistics Hub, including ensuring its compliance with this document, will occur as part of the Development Application and Development Consent process under the Act. The final design will therefore be a design which is reflected in the Development Consent, the approved plans and Construction Certificates issued pursuant to the Development Consent.
- (c) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under clause 3.2(a) of Schedule 3 or for any errors, omissions or non-compliance with this document.
- (d) 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 their obligations under this document.

4. CONSTRUCTION OF LOGISTICS HUB

4.1 Insurance

- (a) From commencement of the construction of the Logistics Hub, 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 Logistics Hub until the end of the Defects Liability Period; and
 - (iii) construction works insurance in relation to the Logistics Hub until Completion.
- (b) The Developer must submit a copy of all certificates of insurance to the City promptly after receiving a request from the City for those certificates.

4.2 Approvals and consents

The Developer must, at its cost, obtain all relevant approvals and consents for the Logistics Hub, whether from the City or from any other relevant Government Agency, including any necessary road opening permits. When requested by the City, the Developer must give to the City copies of all approvals and consents for the Logistics Hub, other than the Development Consent.

4.3 Construction work

The Developer must, at its cost:

- (a) carry out and complete the Logistics Hub in accordance with all approvals and consents relating to the Logistics Hub, including any approval given by the City under this document;
- (b) ensure that all Logistics Hub is constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Logistics Hub is structurally sound and suitable for its intended use; and
- (c) ensure that:
 - (i) the Logistics Hub is Complete by the due date specified in paragraph 1(a) of the table in clause 1 of Schedule 3;
 - (ii) Operational by the date specified in paragraph 1(c) of the table in clause 1 of Schedule 3; and
 - (iii) promptly after becoming aware advise the City's Representative of any significant delays in completing the Logistics Hub or delays that may impact the delivery of the Public Benefits by the due dates specified in the table in clause 1 of Schedule 3.

4.4 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 Logistics Hub at reasonable times and on reasonable notice while accompanied by a representative of the Developer and who must comply with the reasonable directions of the Developer (including the builder) while on the Land; and
- (b) notify the Developer's Representative of any material or significant defect, error or omission relating to the construction or installation of the Logistics Hub 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.

5. **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 Logistics Hub 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 Logistics Hub. 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

- (a) AS 1725 Geotechnical Site investigations
- (b) AS 4455 Masonry Units and segmental pavers
- (c) AS 4678 Earth Retaining Structures
- (d) AS 3600 Concrete Structures
- (e) AS 2876 Concrete kerbs and channels
- (f) AS 1158 Road Lighting
- (g) AS 1743 Road signs
- (h) AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- (i) AS 3500 Plumbing and Drainage
- (j) AS 3700 Masonry Structures
- (k) AS 2890 Parking Facilities
- (l) AS 1428 Design for Access and Mobility
- (m) AS 4454 Composts, soil conditioners and mulches

Relevant Australian Standards – Roads (including pedestrian areas)

- (a) AS 1725 Geotechnical Site investigations
- (b) AS 4455 Masonry Units and segmental pavers
- (c) AS 4678 Earth Retaining Structures
- (d) AS 3600 Concrete Structures
- (e) AS 2876 Concrete kerbs and channels
- (f) AS 1158 Road Lighting
- (g) AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- (h) AS 1428 Design for Access and Mobility
- (i) AS 3500 Plumbing and Drainage
- (j) AS 3700 Masonry Structures
- (k) AS 2890 Parking Facilities
- (l) AS 1742 Manual of uniform traffic control devices
- (m) AS 1743 Road Signs

City Standards (All Works)

- (a) City of Sydney Contaminated Lands DCP 2004
- (b) Sydney Street Code 2013
- (c) Sydney Lights Code 2013
- (d) City of Sydney Access Policy
- (e) Sydney Street Technical Specification and Drawings
- (f) City of Sydney Street Tree Master Plan 2011
- (g) City of Sydney Public Domain Manual

6. **GUIDELINES FOR ENVIRONMENTAL COMMITMENTS**

The following list of guidelines are included for information purposes only for the general nature of the Environmental Commitments 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 Commitments. The Developer must make its own enquiries regarding whether any guideline has been replaced or supplemented.

- (a) Factsheet 4: Preparing for NABERS office rating applications prepared by NSW Office of Environment and Heritage, published August 2011
- (b) Factsheet 5: Preparing for NABERS hotel rating prepared by NSW Office of Environment and Heritage, published September 2014
- (c) Factsheet 7: The NABERS Energy Commitment Agreement prepared by NSW Office of Environment and Heritage, published July 2014
- (d) Guidelines for the use of simulation in Commitment Agreements prepared by NSW Office of Environment and Heritage, version 2011-June
- (e) NABERS Guide to Building Energy Estimation, prepared by NSW Office of Environment and Heritage, published June 2011
- (f) NABERS Guide to Tenancy Energy Estimation, prepared by NSW Office of Environment and Heritage, published June 2011
- (g) Rules for collecting and using data (formerly titled Validation Protocol) version 3.0, February 2013, prepared by NSW Office of Environment and Heritage
- (h) City of Sydney Sustainable Design Technical Guideline dated 2020

EXECUTION

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

Name of witness

456 Kent Street, Sydney NSW 2000

Address of witness

Position of officer

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

Signed for The Trust Company (Australia) Limited ACN 000 000 993
by its attorney pursuant to Power of Attorney BK 4676 No 134
(who states that by executing this document that the attorney has received no notice of revocation of the power of attorney):

Witness Signature

Attorney Signature

Print Name

Print Name

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

EXECUTED by Bieson Pty Ltd ACN 110 465 168 in accordance with s127(1) of the Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE A

1. LOGISTICS HUB

- (a) The provision of a public loading dock facility comprising 7 loading dock bays consisting of 1 MRV, 2 SRVS and 4 B99 size bays, or such alternate loading dock arrangements that provide for a similar capacity based on new loading arrangements at the time, as are agreed with the City (acting reasonably) in writing. The spatial requirements of the Logistics Hub including vertical clearance of the bays must meet the requirements of Section 3.11.13 of the Sydney Development Control Plan 2012.
- (b) The Logistics Hub will be fully owned, managed and maintained by the owner of the Land from time to time and must be made available for use by the public particularly for those situated in the immediate precinct. The owner of the Land may appoint a manager of the Logistics Hub to manage the Logistics Hub in accordance with the requirements of this document and the Plan of Management.
- (c) Vehicle access to and from the Logistics Hub will be via Sussex Street.
- (d) Users of the Logistics Hub must be able to transport goods from Sussex Street or Kent Street via a goods lift and using a safe and level path of travel without stairs.
- (e) The minimum hours of operation for loading must be, as a minimum, the same as the City's on-street parking restrictions on Kent Street from time to time, currently being 6am to 6pm on weekdays, 7am to 10am on Saturdays.
- (f) Users of the Logistics Hub must be charged no more than the City's charges for on street loading in Kent Street as updated from time to time. In the event that on street loading for Kent Street is no longer provided by the City, users of the Logistics Hub must be charged no more than the City's charges for on street loading for an equivalent street in Central Sydney.
- (g) The owner of the Land from time to time will provide and maintain a system to accommodate online bookings and access to the Logistics Hub to accommodate bookings and access, including a process to manage after-hours access if required.
- (h) Sufficient space will be provided in each MRV, SRV and B99 bay for the purpose of providing set down areas for the duration of use, in accordance with all relevant Australian Standards.
- (i) Users must adhere to the requirements of the Plan of Management, including completing any required security details to manage access.

2. PRE-DEVELOPMENT APPLICATION REQUIREMENTS

Prior to lodgement of the Development Application that includes the Logistics Hub, the Developer must provide the plans of the Logistics Hub that it intends to submit as part of the Development Application for review by the City to confirm the Logistics Hub is capable of achieving the requirements of this document.

3. **DEVELOPMENT APPLICATION REQUIREMENTS**

The Developer must identify the Logistics Hub in the Development Application and demonstrate how the requirements in this document have been met.

The Developer must prepare and submit a draft Plan of Management for Logistics Hub with the Development Application.

4. **PLAN OF MANAGEMENT**

- (a) The Developer must prepare a Plan of Management that provides for the establishment, ongoing use, management and maintenance of the Logistics Hub.
- (b) The Plan of Management must include in line with this document:
 - (i) The objectives of the Plan of Management including compliance with this document.
 - (ii) Details as to how public access to the Logistics Hub will be provided on an ongoing basis.
 - (iii) Details as to how the Plan of Management will be implemented, including how the ongoing use, management and maintenance of the Logistics Hub will be achieved.
 - (iv) Details of any costs or fees to be charged for use of the Logistics Hub including benchmarking against the costs or fees charged for on street loading in Kent Street and how the costs or fees will be reviewed and revised.
 - (v) Details of the consultation undertaken in preparation of the Plan of Management including with parties that may use or support the use of the Logistics Hub.
 - (vi) Details of how the Logistics Hub will be actively promoted to potential users.
 - (vii) Progress reporting as detailed below in the section titled "Progress Reporting Requirements".
- (c) The Plan of Management will be developed by the Developer in consultation with the City and must contain terms consistent with this document that are acceptable to the City (acting reasonably).

5. **PROGRESS REPORTING REQUIREMENTS**

- (a) The Developer must deliver to the City a written report each year, to be provided no later than two weeks after the end of each year period (or as otherwise agreed between the parties), providing full details of:
 - (i) the Developer's progress in operating the Logistics Hub;
 - (ii) annual maintenance and management costs;

- (iii) whether the Logistics Hub is externally managed;
- (iv) usage data by bay in the Logistics Hub in csv format with the following fields:
 - (A) Required: Bay ID, Bay size, Date, Start time, End time, duration
 - (B) Optional (depending on what can be collected via booking platform): Building serviced, reason for trip, how did you hear about us

Note: The City reserves the right to share or publish this data or request the data to be provided in a different format.

- (C) such other information in relation to this document as the City may from time to time reasonably request.
- (b) The Developer must ensure that all reports:
- (i) contain all required information, and
 - (ii) are accurate and not misleading in any respect.

ANNEXURE B

Instruments – Through-site link easement for access and positive covenant

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919.

(Sheet 1 of 6 sheets)

Plan: Plan of easement and positive covenant over Lot [insert] in DP [insert]

Full name and address of the owners of the land: **The Trust Company (Australia) Limited**
Level 20, 1 Martin Place, Sydney NSW 2000

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 [<i>#insert consistent with final plan</i>]	Lot 1 in DP778342	The Council of the City of Sydney
2	Positive Covenant (Public Access)	Lot 1 in DP778342	The Council of the City of Sydney

Part 2 (Terms)

INTERPRETATION

1. Definitions

These meanings apply unless the contrary intention appears:

Authorised User means every person authorised by the Council 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. Where the Easement benefits the Council, 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.

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

Plan means the plan registered together with this Instrument.

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

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 Instrument 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; and
- (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.

3. Headings

Headings do not affect the interpretation of this Instrument.

4. Positive covenants and maintenance requirements

A requirement in an Easement which requires the 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.

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.

TERMS OF EASEMENT FOR PUBLIC ACCESS VARIABLE WIDTH LIMITED IN HEIGHT AND DEPTH [#INSERT (IF APPLICABLE)] NUMBERED ONE IN THE PLAN

1. Grant

Subject to the Grantor's rights under clauses 3 to 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. 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.

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:

- (a) to minimise inconvenience, disturbance or damage to the Grantor, the Lot Burdened and any occupier of the Lot Burdened;
- (b) to cause as little damage as is practicable to the Lot Burdened and any improvements on it; and

- (c) 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.

4. Grantor may restrict access

Council and its Authorised Users may not exercise their rights under clause 2 of this easement:

- (a) during any period in which the Grantor is entitled to restrict access over the Easement Site in accordance with clause 5; and
- (b) 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.

5. Restrictions on access

Without limiting the Grantor's rights under clauses 4 and 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 a 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 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 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 complies 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 1.

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.

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.

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

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

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.

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 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. 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).

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.

