

Lease Variation - Pedestrian Link Stratum, Wynyard Lane - Brookfield

File No: S094584.062

Summary

Brookfield Office Properties One Carrington Developer Pty Ltd received Development Consent from the Department of Planning on 30 November 2016 to build a 27-level office building with an area of 59,400 square metres of office space. The approval included part of the building which will be positioned over Wynyard Lane requiring a stratum lease to enable a pedestrian link over the site.

On 19 November 2018, Council approved the granting of a proposed stratum lease and the essential lease terms. The original approval by Council provided for a stratum to be utilised as a pedestrian bridge cantilevered over Wynyard Lane and comprising an area of between 77 square metres to 182 square metres, subject to final survey.

This report seeks Council's approval to vary the Agreement for Lease to include an additional area of 185.7 square metres, which extends from the pedestrian bridge area, under the lease. The additional area is required to provide services to the entire precinct.

The Agreement for Lease will also be varied to provide for an additional upfront rental payment and the security amount will also be increased to reflect the additional use of the extended area. All other terms will remain the same as previously approved by Council.

The precinct is well under construction and Brookfield have advised that the structure which forms the pedestrian bridge area and the newly proposed services area has been largely constructed. As part of Brookfield obtaining its subdivision certificate to create a lot for the pedestrian bridge premises, Brookfield requested that the lot comprising the pedestrian bridge area, and in turn, the lease for the pedestrian bridge area, be varied to include the new additional services area.

The City has agreed in principle to vary the lease terms with Brookfield, subject to Council approval. The summary of the varied essential lease terms is detailed at Confidential Attachment A.

Council approval is required for:

- (a) an additional area of 185.7 square metres;
- (b) an additional use as a services area; and
- (c) an additional upfront payment fee as set out in Confidential Attachment B.

The Director of the Department of Planning has delegated its right of consent for leases over land above or below a public road pursuant to Section 149 of the Roads Act 1993 to Council.

Recommendation

It is resolved that:

- (A) pursuant to Section 149 of the Roads Act 1993, Council approve the granting of a variation to the stratum lease to BSREP Wynyard Place Retail Landowner Pty Ltd as trustee for BSREP Wynyard Place Retail Landowning Trust Pty Ltd ABN 91 865 529 217 for proposed stratum over Wynyard Lane as part the proposed office development known as One Carrington Street Sydney; and
- (B) authority be delegated to the Chief Executive Officer to negotiate, execute and administer the variation to the stratum lease referred to in clause (A) above consistently with the Essential Lease Terms and Conditions in Confidential Attachment B to the subject report.

Attachments

Attachment A. Proposed Subdivision of Wynyard Lane

Attachment B. Essential Lease Terms and Conditions (Confidential)

Background

1. Brookfield Office Properties One Carrington Developer Pty Ltd received development consent issued by the Department of Planning on 30 November 2016 to build a 27-level office building with an area of 59,400 square metres and with links to Wynyard Station. The development will be known as One Carrington Street. The site includes the following buildings: 301 George Street, Menzies Hotel, Shell House at the corner of Margaret Street and Carrington Street, and 285 George Street. All buildings with the exception of Shell House have been demolished.
2. Development Consent Final Approval, Determination of Modification Application for One Carrington (SSD 5824 MOD 9) was approved on 19 December 2019, by a delegate on behalf of the Minister for Planning.
3. The development will feature a highly anticipated commercial precinct in the northern precinct of the Sydney CBD. The project is described as a premium grade commercial office space which will be strategically located next to a major transport hub at Wynyard Station. The development will require a stratum lease to enable a pedestrian link over the site.
4. The proposed stratum, which is to be utilised as a pedestrian bridge, will have an area of 77.7 square metres, and the proposed stratum, which is to be utilised for services which will service the entire precinct, will have an additional area of 185.7 square metres.
5. A lease term of 99 years for the stratum lease was previously agreed for the pedestrian bridge area and is proposed for the additional services area.
6. An upfront rental sum has been paid for the area which will be used as a pedestrian bridge link. An additional upfront rental sum will be paid for the additional area which will be used as a services area.
7. The security amount will be increased to reflect the additional services area.
8. The diagram in Attachment A shows both the pedestrian bridge area and the services area.
9. The City's appointed Valuer, BEM Property Consultants and Valuers, undertook an assessment of the commencing annual rental for the stratum lease for the pedestrian bridge area and has assessed the rental for 99 years to provide the lump sum instalment, shown at Confidential Attachment B.
10. The City's appointed Valuer, BEM Property Consultants and Valuers, also undertook an assessment of the commencing annual rental for the stratum lease for the services area in accordance with the City's Fees and Charges and has assessed the rental for 99 years to provide the lump sum instalment, shown at Confidential Attachment B.
11. As the Brookfield tenant entity is now foreign owned, the proposed variation to the Agreement for Lease needs to be conditional on Brookfield obtaining the Foreign Investment Review Board's approval of the additional leased area before the lease commencement date. If Brookfield cannot obtain this approval, the variation will not proceed.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

12. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
 - (a) Direction 10 - Implementation through Effective Governance and Partnerships – specifically, Action 10.5.1- Expand revenues from commercial operations, property portfolio and other income generating assets.
13. The outcome of the high-level lease terms negotiated with Brookfield is consistent with the above action.

Financial Implications

14. Income for the additional services area stratum was not anticipated, and therefore was not included in the City's operating budget for the financial year 2020/21.
15. There will be no ongoing operational costs to Council arising from it granting the proposed stratum lease.
16. The lump sum amount will be recognised as income entirely within the 2020/21 financial year, reflecting the 99-year tenure, during which the City will not retain operational control of the service area stratum.
17. Brookfield will be responsible for the cost of establishing the structure and maintaining the stratum.

Relevant Legislation

18. Roads Act 1993 - Section 149 of the Roads Act 1993 permits the roads authority (Council), with the consent of the Director of Planning, to lease the air space above, or land below the surface of, any public road (other than a Crown road) that is owned by the authority for a term, together with any option to renew, not exceeding 99 years. This proposal is in accordance with this section of the Act. The Director of Planning has delegated its consent right under Section 149 of the Roads Act to Council.
19. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business or prejudice the commercial position of the person who supplied it.
20. Attachment B contains confidential commercial information and details of Council's valuation and contingencies which, if disclosed, would:
 - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person who supplied it.
21. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Critical Dates / Time Frames

22. Brookfield is required, as a condition of its subdivision development approval, to enter into a stratum lease with the City for the services area. It is understood that this condition is the last condition remaining to be satisfied, so the entering into a variation to the stratum lease to include the services area will allow Brookfield to progress its subdivision.

Options

23. The City has the option not to proceed with the lease of the stratum. This will likely result in a claim against the City and a significant loss of potential commercial revenue.
24. This construction work has been largely completed.
25. The City has considered the option to lease the stratum and believes it will achieve significant commercial income for the City of Sydney.

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