

Attachment D

Voluntary Planning Agreement

Planning Agreement

The Council of the City of Sydney (ABN 22 636 550 790)

and

Samprian Pty Ltd (ABN 98 168 737 488)

757-763 George Street, Haymarket

Reference: S153569

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THIS PLANNING AGREEMENT is made on 2022

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) **SAMPRIAN PTY LTD** ABN 98 168 737 488 of C/- KPMG, Level 8, 91 Phillip Street, PARRAMATTA NSW 2150 (the **Developer**).

BACKGROUND

- (A) The Developer is the owner of the Land and (the proponent of the Planning Proposal) 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)*.

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

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

Authorisation means:

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

including any renewal or amendment.

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

City Land means land that is owned or under the care, control or management of the City, and includes land that is intended to be transferred or dedicated to the City under this document. Land owned by the City includes land classified as operational or community land, including public reserves. Land under the City's care and control and management includes Crown land, roadways (including footpaths) and third-party owned land where the City has been granted tenure.

City's Personal Information means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Developer).

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.

Completion means the point at which the Public Benefit is complete except for minor defects:

- (a) the existence of which does not prevent the Public Benefit being reasonably capable of being used for its intended purpose;
- (b) which the Developer has grounds for not promptly rectifying; and
- (c) rectification of which will not affect the immediate and convenient use of the Public Benefit for its intended purpose.

Completion Notice means a notice issued by the Developer in accordance with clause 6.1.

Confidential Information means:

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

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

Confidential Information does not include information that:

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

Construction Certificate has the same meaning as in the Act.

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

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

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

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Developer's Works and/or Public Art or any other matter which prevents the Developer's Works and/or Public Art 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 on which the Developer's Works and/or Public Art reaches Completion.

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

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

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

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

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

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

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.

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

Guarantee Amount(s) means a Guarantee or Guarantees for the total amount listed in Item 6 of Schedule 1 of this document.

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

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

Insolvency Event means:

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

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

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

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

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

Monetary Contribution means that part of the Public Benefits described as “Monetary Contribution” in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

Occupation Certificate has the same meaning as in the Act.

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

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

Planning Proposal means the planning proposal for the Land at 757-763 George Street, Haymarket lodged by or on behalf of the Developer on or about 31 October 2020 with the City.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

Public Art means that part of the Public Benefits described as the provision of “Public Art” in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

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

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

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

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

1.2 Rules for interpreting this document

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

(a) A reference to:

- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

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

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

2.1 Application of this document

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

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

2.2 Public Benefits to be made by Developer

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

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

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

- (a) The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.
- (b) For the avoidance of doubt, if the City imposes a condition of consent on a Development Consent for the Development under section 7.11 of the Act requiring payment of a contribution authorised by a contributions plan, no further contributions pursuant to section 7.11 or section 7.12 of the Act are payable in relation to the Development Consent as they will be paid in accordance with this planning agreement.

2.4 City rights

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

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

2.5 Explanatory note

The explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

3. **OPERATION OF THIS PLANNING AGREEMENT**

3.1 Commencement

This document will commence on the later of:

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

4. **WARRANTIES**

4.1 Mutual warranties

Each party represents and warrants that:

- (a) (**power**) it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) (**Authorisations**) it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;

- (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
- (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) (**documents effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) (**no controller**) no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 Developer warranties

- (a) The Developer warrants to the City that, at the date of this document:
 - (i) it is 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

5.1 Developer to provide Public Benefits

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

6. **COMPLETION**

6.1 Date of Completion

The Developer must ensure that the Public Benefits are achieved on or before the date or milestone referred to in clause 1 of Schedule 3 of this document (**Completion**).

6.2 Developer completion notice – Public Benefits

When, in the reasonable opinion of the Developer, a Public Benefit has reached Completion, the Developer must notify the City's Representative in writing and must include in or attached to that notice:

- (a) In relation to the Public Art prior to the issue of the Occupation Certificate for the Development:
 - (i) a statement that the Public Art installation has been completed;
 - (ii) a copy of the draft Final Public Art Report (Final Report) in electronic format for the approval of the City;
 - (iii) copies of any warranties, guarantees, maintenance information or other material in the possession of the Developer reasonably required for the City to assume responsibility for the Public Art on City Land.
 - (iv) copies of any warranties, contractual arrangements, guarantees, insurance policies or other evidence that Public Art not installed on City Land will be adequately maintained during the Defects Liability Period (if applicable).
- (b) If the City has elected not to take ownership of the Public Art, the Developer must enter into an agreement with the City for the installation of the Public Art on the City Land in accordance with clause 5.1 (b) of Schedule 3.

(Completion Notice). For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Public Benefits, however the Developer must ensure that Completion is achieved for the Public Benefits before the due date specified in Item 1 of Schedule 3.

6.3 Inspection by the City

- (a) The City's Representative must inspect the Developer's Works and/or the Public Art within 5 Business Days of the date that the Completion Notice is received by the City. The City's Representative may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 6.2. Within 10 Business Days of the date of the inspection by the City's Representative, the City must by written notice to the Developer:
 - (i) state that the Final Public Art Plan has been approved and Completion has been achieved;

- (ii) state that the Final Public Art Plan has not been approved and Completion has not been achieved and, if so, identify the Defects, errors or omissions which, in the opinion of the City's Representative, prevent Completion; or
 - (iii) issue a notice under clause 6.4(a).
- (b) Nothing in this clause 6.3, or any notice issued under this clause 6.3, will:
- (i) reduce or waive in any manner the Developer's responsibility to:
 - (A) deliver the Developer's Works and/or the Public Art in accordance with this document; or
 - (B) the Developer's responsibility to correct Defects, errors or omissions, whether or not these are identified by the City; or
 - (ii) create any liability for the City in relation to any defective aspect of the Developer's Works and/or the Public Art.

6.4 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 either:
 - (i) complete the Public Benefits itself; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document; or
 - (iii) in relation to the Public Art, elect to install public art in another location in the City that achieves the primary purpose of public art as a public benefit,

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

- (c) If the City exercises its rights under this clause 6.4 to complete the Public Benefits, the Developer grants the City a licence for the period necessary for the City to access the Land to carry out, or procure the carrying out, of the Public Benefits.

7. **INDEMNITY**

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

8. **DEFECTS LIABILITY**

8.1 Security for Defects Liability Period

Until the expiry of the relevant Defects Liability Period, the City may retain from the Guarantee an amount equal to 10% of the Attributed Value of the Public Benefits 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,

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

(b) If the Developer is unable or unwilling to comply with clause 8.2(a), or fails to rectify the Defect within three months of receiving notice from the City under clause 8.2(a), the City may:

- (i) rectify the Defect itself;
- (ii) make a claim on the Guarantee in accordance with clause 10.3 of Schedule 3 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 AND CAVEAT**

9.1 Registration of this document

(a) The Developer:

- (i) consents to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land;
- (ii) warrants that it has obtained all consents to the registration of this document on the certificate of 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 but not limited to:
 - (A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services;
 - (B) providing the production slip number when the Developer produces the certificate of title to the Land at the NSW Land Registry Services; and
 - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
- (iv) 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 Caveat

- (a) The City may, at any time after the date of this document, register a caveat over the Land preventing any dealing with the Land that is inconsistent with this document. Provided that the City complies with this clause 9.2, the Developer must not object to the registration of this caveat and may not attempt to have the caveat removed from the certificate of title to the Land.
- (b) In exercising its rights under this clause 9.2 the City must do all things reasonably required to:
 - (i) remove the caveat from the Land once this document has been registered on the certificate of title to the Land; and
 - (ii) consent to the registration of:
 - (A) this document; and
 - (B) any plan of consolidation, plan of subdivision or other dealing required by this document or the Development Consent.

9.3 Release of this document

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.

10. **ENFORCEMENT**

10.1 Developer to provide Guarantee

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

10.2 Adjustment of Guarantee Amount

- (a) Subject to clause 10.2(b), following each anniversary of the date of the Guarantee (the "Adjustment Date") and at any time prior to the expiry of the Defects Liability Period, the Guarantee Amounts are to be adjusted to a revised amount by applying the following formula:

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

where:

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

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

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

B is the Index Number most recently published:

- (i) before the date of the Guarantee for the first Adjustment Date; and
- (ii) before the preceding Adjustment Date for every subsequent Adjustment Date

If after the formula is applied the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.

- (b) If the Guarantee Amount is adjusted under clause 10.2(a), the Developer is not required to provide the City with a replacement Guarantee for that revised Guarantee Amount until such time as the City notifies the Developer that the City is ready to exchange the then current Guarantee held by the City, following which the City and the Developer must promptly exchange the then current Guarantee held by the City with a replacement Guarantee for that revised Guarantee Amount from the Developer.

10.3 Right of City to claim on Guarantee

- (a) The Developer agrees that the City may make an appropriation from the Guarantee in such amount as the City, acting reasonably, thinks appropriate if:
 - (i) The Developer fails to comply with clause 2 of Schedule 3 (payment of Monetary Contribution);
 - (ii) the City allows the Developer not to complete the Public Benefits, or any part of it, in accordance with clause 6.4(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 6.4(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/ and or the Public Art 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 and/or the Public Art does 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); or
 - (viii) 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:
 - (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document; and
 - (ii) carrying out any works required to achieve the Public Benefits; or
 - (iii) in relation to the Public Art component of the Public Benefits, procuring and installing public art in another location in the City that achieves the primary purpose of public art as a public benefit.

10.4 Expenditure by the City

If the City claims on the Guarantee to Complete the Developer's Works and/or the Public Art, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works and/or the Public Art to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or

- (b) may expend more than the Guarantee Amount. If the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer.
- (c) Where the Developer has failed to deliver the Public Art and the City elects not to complete the Public Art in accordance with the approved Public Art Plan, then the City may not expend more than the Guarantee Amount held for the Public Art in delivering public art.

10.5 Top-up and return of Guarantee

- (a) If the City calls upon the Guarantee in accordance with this clause 10 then the Developer must immediately provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with paragraph (b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.
- (b) If:
 - (i) the monies secured by the Guarantee have not been expended;
 - (ii) the City has concurred with Completion in accordance with clause 6.3(a)(i) of this document, taking into account any approved non-completion of the Developer's Works and/or the Public Art approved by clause 6.4(a) of this document; and
 - (iii) the City has been provided with the security for the Defects Liability Period in accordance with clause 8.1,
 then the City will promptly return the Guarantee to the Developer following the issue of a notice pursuant to clause 6.3(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 then the City must promptly return to the Developer the portion of the Guarantee retained by the City as security for the Defects Liability Period.

10.6 Compulsory acquisition

Not used

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 10; 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 10 for any purpose other than in an attempt to settle the Dispute.

11.4 Condition precedent to litigation

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

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

11.5 Summary or urgent relief

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

12. TAXES AND GST

12.1 Responsibility for Taxes

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

12.2 GST free supply

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

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

12.3 Supply subject to GST

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

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

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

13. **DEALINGS**

13.1 Dealing by the City

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

13.2 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 9, the Developer must not Deal with this document or the Land without:
 - (i) the prior written consent of the City; and
 - (ii) 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.
- (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; 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.

- (c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.

14. **TERMINATION**

- (a) The City may terminate this document by notice in writing to the Developer if the amended Sydney LEP is:
 - (i) subsequently amended by an environmental planning instrument made after the planning Proposal in a way that prevents the Development from proceeding; or
 - (ii) declared to be invalid by a court of competent jurisdiction.
- (b) If the City terminates this document under clause 14(a) then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss that the City may suffer as a result of the termination of this document;
 - (iii) the City will return the Guarantee to the Developer after first deducting any amounts owing to the City or costs incurred by the City by operation of this document. If in exercising its rights under this document the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer; and
 - (iv) the City will, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land.

15. **CONFIDENTIALITY AND DISCLOSURES**

15.1 Use and disclosure of Confidential Information

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 15.2 or 15.3.

15.2 Disclosures to personnel and advisers

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 15.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 15.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 15.2(b)(i).

15.3 Disclosures required by law

- (a) Subject to clause 15.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 15.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

15.4 Receiving party's return or destruction of documents

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

15.5 Security and control

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

15.6 Media releases

The Developer must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits without the City's prior written consent.

15.7 Privacy

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

16. **NOTICES**

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

- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

17. GENERAL

17.1 Governing law

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

17.2 Access to information

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

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

17.3 Liability for expenses

- (a) The Developer must pay its own and the City's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulations and for any consent the City is required to provide under this document.

17.4 Relationship of parties

- (a) Nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

17.5 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

17.6 Time for doing acts

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this document,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

17.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

17.8 Preservation of existing rights

The expiration or termination of this document does not affect any right that has accrued to a party before the expiration or termination date.

17.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

17.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

17.11 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

17.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

17.13 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

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

17.14 No fetter

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

17.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

| ITEM | TERM | DESCRIPTION |
|------|-----------------------------------|---|
| 1. | Land | Lot 11 in DP 70261, known as 757-759 George Street, Haymarket; and Lot 1 in DP 1031645 and known as 761-763 George Street, Haymarket. |
| 2. | Development | <p>Development of a proposed new tower on the Land up to maximum height of RL 117.87m as contemplated in the Planning Proposal encompassing the setbacks on the Land adjacent to the public domain.</p> <p>The total Gross Floor Area of the Development on the Land is 11,435 square metres plus any below ground floor space.</p> |
| 3. | City's Representative | <p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email: planningsystemsadmin@cityofsydney.nsw.gov.au</p> |
| 4. | Developer's Representative | <p>Name: Mitchell Favaloro</p> <p>Address: PO Box 382, Leichhardt NSW 2040</p> <p>Email: mitchell.favaloro@ceerose.com.au</p> |
| 5. | Development Application | Any development application submitted to the City in connection with the Development. |
| 6. | Guarantee Amount | An amount equal to the Attributed Value of the Public Art in Schedule 3 |
| 7. | Guarantee Amount Due Date | Prior to the first Construction Certificate for the Development |

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

| ITEM | SECTION OF ACT OR REGULATION | PROVISION/CLAUSE OF THIS DOCUMENT |
|------|--|---|
| 1. | <p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p> | <p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p> |
| 2. | <p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p> | Item 1 of Schedule 1. |
| 3. | <p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p> | The environmental planning instrument as described in clause 2.1. |
| 4. | <p>The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p> | Schedule 3. |
| 5. | <p>Whether this document excludes (wholly or in part) or does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)</p> | <p>Section 7.11 excluded</p> <p>Section 7.12 not excluded</p> <p>Section 7.24 excluded</p> |
| 6. | <p>Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)</p> | The application of section 7.11 of the Act is excluded in respect of the Development and contributions (if any) under section 7.11 will not be required to be paid. |

| ITEM | SECTION OF ACT OR REGULATION | PROVISION/CLAUSE OF THIS DOCUMENT |
|-------------|--|---|
| 7. | Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act) | Not applicable because this document excludes section 7.11 of the Act. |
| 8. | Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act) | Clause 11 |
| 9. | Enforcement of this document (section 7.4(3)(g) of the Act) | Clause 10 |
| 10. | No obligation to grant consent or exercise functions (section 7.4(9) of the Act) | Clause 2.4 |
| 11. | Registration of this document (section 7.6 of the Act) | Clause 9 |
| 12. | Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation) | Payment of the Monetary Contribution; and Provision of the Bank Guarantee |
| 13. | Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation) | Nil |
| 14. | Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation) | Installation of the Public Art |
| 15. | Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation) | Clause 2.5 |

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS - OVERVIEW

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

| | Public Benefit | Attributed Value | Due date | Additional specifications |
|--|-----------------------|-------------------------|-----------------|----------------------------------|
| | | | | |

| | | | | |
|----|-----------------------|--|--|---|
| 1. | Monetary Contribution | 3% of the cost of the Development | On or before the date of issue of the Construction Certificate for the Development | Inclusive of all infrastructure contributions applicable under s7.12 of the Act |
| 2. | Public Art | 0.5% of the total cost of the Development (to a minimum value of \$400,000.00) | Prior to the issue of the first Occupation Certificate for the Development. | The provision of on-site public art in accordance with the City's Public Art Policy. The provision of the Public Art is exclusive of any public art requirements under a development consent |

2. PAYMENT OF MONETARY CONTRIBUTION

2.1 Payment

The Developer must pay the Monetary Contribution to the City on or before the date of issue of the Construction Certificate for the Development in cash or by unendorsed bank cheque.

2.2 Indexation

If the Monetary Contribution is not paid to the City on the date of this document then at the date of payment the Monetary Contribution must be indexed as follows:

Monetary Contribution (to be provided) =

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

where:

A is the Index Number most recently published before the date the Monetary Contribution is to be paid

B is the Index Number most recently published before the date this agreement commenced in accordance with clause 3.1 of this document.

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

2.3 No trust

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

Contribution or comply with any request by the Developer to trace the Monetary Contribution.

3. **TRANSFER LAND**

Not used

4. **DEVELOPER'S WORKS**

Not used

5. **PUBLIC ART**

5.1 Preliminary Public Art Plan

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

- (iii) any conditions of any Development Consent granted that relates to the Development; and
- (iv) the reasonable requirements of the City, including in regard to the Standards.

5.2 Detailed Public Art Plan

- (a) Prior to the issue of the first Construction Certificate for above ground works of the Development, the Developer must submit to the City's Representative for approval:
 - (i) a Detailed Public Art Plan (Detailed Plan) based on the approved Preliminary Plan, and in accordance with the City's Guidelines for Public Art in Private Development; and
 - (ii) a detailed budget included in the Detailed Plan setting out the estimated cost of the Public Art.
- (b) Within 20 Business Days after the City's Representative has received the Detailed Plan including the detailed costs estimate, the City will inform the Developer in writing as to whether the Detailed Plan and costs estimate are approved. If the Detailed Plan or costs estimate are not approved, the City will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the required information, following which the process outlined in this paragraph (b) will apply again.
- (c) Regarding the costs estimate, the Developer agrees that the City acting reasonably may:
 - (i) require substantiation for the costs of items where the amount estimated is considered by the City to be excessive;
 - (ii) require an adjustment to the costs estimate to reflect a variation to the design required under this clause 5.2 of Schedule 3.
- (d) If the Developer:
 - (i) fails to prepare the Detailed Plan or detailed costs estimate; or
 - (ii) does not provide further information or modify the Detailed Plan or detailed costs estimate,

in accordance with this clause 5.2 of Schedule 3, then the City may exercise its rights under clause 10 of this document in order to carry out the Public Art itself at the cost of the Developer.
- (e) The Developer agrees that the scope of the Public Art may be adjusted following completion of the process set out in this clause 5.2 of Schedule 3.

5.3 Preparation of and changes to the Detailed Plan

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

- (a) Following approval of the Detailed Plan by the City in accordance with clause 5.2 of Schedule 3, the Developer must promptly:
 - (i) prepare construction design drawings that comply with the Detailed Plan; and
 - (ii) provide the City with a copy of the construction design drawings.
- (b) The City, acting reasonably, may by written notice to the Developer at any time, approve, vary or direct the Developer to vary the construction design drawings so that the Developer's Works reflect:
 - (i) the Standards;
 - (ii) a departure or discrepancy from the Plans approved under this clause 5 of Schedule 3; or
 - (iii) any other standard or specification for materials or methodology for carrying out works that is adopted by the City from time to time, provided that any direction given under this clause 5.3(b)(iii) of Schedule 3 does not significantly increase:
 - (A) the cost of that element of the Public Art; or
 - (B) the complexity of implementation of the Public Art that may lead to a significant delay in the completion of the Public Art.
- (c) Within 20 Business Days of receiving a notice from the City under clause 5.3(b) of Schedule 3, the Developer must:
 - (i) to the extent practicable, use reasonable endeavours to comply with the notice given by the City; or
 - (ii) if the Developer determines that the notice given by the City is unreasonable or impracticable, notify a dispute in accordance with clause 11 of this document.

If the Developer does not provide any response during the 20 Business Days after receiving a notice from the City under clause 5.3(b) of Schedule 3, it is deemed that the Developer accepts the notice given by the City and will take all steps required to comply with the notice.

- (d) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under this clause 5 of Schedule 3 or for any errors, omissions or non-compliance with this document.
- (e) No participation by the City in the development of, the review of, or comments on any design drawings submitted by the Developer will lessen or otherwise affect the Developer's obligations under this document or constitute an acknowledgement by the City that the Developer has complied with its obligations under this document.

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

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

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

6.1 Insurance

- (a) From commencement of the construction and installation of the Public Art until expiration of the Defects Liability Period, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:
 - (i) worker's compensation insurance or registrations as required by Laws;
 - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;
 - (iii) construction works insurance in relation to the Developer's Works; and
 - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the City:
 - (i) prior to commencing construction and installation of the Public Art; and
 - (ii) promptly following a written request by the City, provided that such a request is not made more than twice in any 12 month period.

6.2 Approvals and consents

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

6.3 Construction/Installation of the Public Art

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

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

6.4 Inspections by the City

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

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

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

7. **STANDARDS**

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

Relevant Australian Standards – Verge Works, Through site links

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

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

Relevant Australian Standards – Roads (including pedestrian areas)

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

City Standards (All Works)

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

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

EXECUTED as a deed.

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

Signature of officer

Signature of witness

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

Name

Position of officer

456 Kent Street, Sydney NSW 2000
Address of witness

EXECUTED by **SAMPRIAN PTY LTD**
(ABN 98 168 737 488) in accordance
with s127(1) of the Corporations Act
2001 (Cth):

Signature of Witness:

Signature of sole director/secretary

Name:

Name:

