

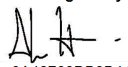
## **Planning Agreement**

### **Environmental Planning and Assessment Act 1979**

Pitt Street North Over Station Development  
Heritage Floor Space

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468)

**Pitt Street Developer North Pty Ltd** (ACN 635 396 824)

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**This Planning Agreement** is dated

**Parties:**

**Minister administering the *Environmental Planning and Assessment Act 1979*** (ABN 20 770 707 468)  
c/- NSW Department of Planning and Environment of Level 11, 4 Parramatta Square, 12 Darcy Street,  
Parramatta NSW 2150

**Pitt Street Developer North Pty Ltd** (ACN 635 396 824) c/- Investa of Level 30, 420 George Street, Sydney  
NSW 2000

**Introduction:**

- A** Sydney Metro owns the Land.
- B** The Developer proposes to carry out the Development on the Land.
- C** The Developer was granted Development Consent to SSD 10375 in relation to the Land.
- D** Condition B11 of the Development Consent granted to SSD 10375 requires the Developer to enter into a planning agreement with the Minister in accordance with clause 6.11A of the LEP and the Alternative HFS Scheme and/or purchase HFS in accordance with clause 6.10 and clause 6.11 of the LEP.
- E** The Developer has offered to enter into this deed with the Minister in connection with the carrying out of the Development on the Land and in satisfaction of Condition B11 of the Development Consent to SSD 10375.

**It is agreed:**

**1. Definitions and interpretation**

**1.1 Definitions**

In this **deed**, unless the context clearly indicates otherwise:

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

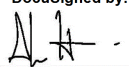
**Address for Service** means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

**Allocation** has the same meaning as in the Alternative HFS Scheme. **Allocated** has the corresponding meaning.

**Alternative HFS Scheme** means the Minister for Planning and Public Spaces' Alternative Heritage Arrangements Scheme dated December 2021.

**Bank Guarantee** means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

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(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Business Day** means any day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, and concludes at 5pm on that day.

**Central Sydney** has the same meaning as in the Alternative HFS Scheme.

**City of Sydney** means The Council of the City of Sydney constituted under section 219 of the LG Act.

**Dealing** means in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering or otherwise dealing with the Land.

**Developer** means Pitt Street Developer North Pty Ltd (ACN 635 396 824).

**Development** means the development of the Land in accordance with the Development Consent granted to SSD 10375, as modified from time to time.

**Development Application** has the same meaning as in the Act.

**Development Consent** has the same meaning as in the Act.

**Development Contribution** means the monetary contribution to be paid by the Developer in accordance with Schedule 4.

**ELNO** has the same meaning as in the *Electronic Conveyancing National Law (NSW)*.

**Explanatory Note** means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act.

**GST** means any form of goods and services tax payable under the GST Legislation.

**GST Legislation** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Heritage Conservation Fund** has the same meaning as in the Alternative HFS Scheme.

**Heritage Floor Space** or **HFS** has the same meaning as in the Alternative HFS Scheme.

**Insurance Bond** means an irrevocable and unconditional undertaking:

(a) by an Insurance Company which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

(b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

**Insurance Company** means an insurance company authorised under the *Insurance Act 1973* and subject to prudential supervision by Australian Prudential Regulatory Authority.

**Land** means the land described in Schedule 3.

**Landowner** means the owner of any part of the Land from time to time, and, at the date of this deed, means the party listed in Schedule 3.

**LEP** means *Sydney Local Environmental Plan 2012*.

**LG Act** means the *Local Government Act 1993* (NSW).

**Mediation Program** means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

**Minister** means the Minister administering the *Environmental Planning and Assessment Act 1979* and includes the Secretary and the Nominated Officer.

**Nominated Officer** means an officer of the Department of Planning and Environment for the time being holding a position nominated by the Secretary for the purposes of this deed.

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

**Planning Application** means:

- (a) a Development Application; or
  - (b) any other application required under the Act,
- relating to the Land.

**Real Property Act** means the *Real Property Act 1900* (NSW).

**Register** means the Torrens title register maintained under the Real Property Act.

**Secretary** means the Secretary of the Department of Planning and Environment.

**Security** means one or more Bank Guarantees or Insurance Bonds in the amounts specified as the 'Security Amount' in the table in clause 1(b) of Schedule 5 and on the terms specified in Schedule 5.

**Sydney Metro** means Sydney Metro constituted under section 38 of the *Transport Administration Act 1988* (NSW).

**Tax** means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

## 1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation made under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **Department of Planning and Environment** continues to be a reference to the Department even if renamed and, if that Department is abolished or ceases to include the group of staff principally responsible for the administration of the Act, is a reference to any other Department or other Public Service agency (within the meaning of the *Government Sector*

*Employment Act 2013*) that includes that group of staff, whether or not the change in relation to the Department occurs before or after the execution of this deed by the Minister;

- (e) a reference to the **introduction**, a **clause**, or a **schedule** is a reference to the introduction, a clause, or a schedule to or of this deed;
- (f) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (g) the **schedules** form part of this deed;
- (h) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (i) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (j) a reference to a **corporation** includes its successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (l) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (m) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (n) **including** and **includes** are not words of limitation;
- (o) a word that is derived from a defined word has a corresponding meaning;
- (p) **monetary amounts** are expressed in Australian dollars;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2. Operation and application of this deed**

### **2.1 Operation**

This deed commences on the date that this deed is signed by all the parties.

### **2.2 Planning agreement under the Act**

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

### **2.3 Application**

This deed applies to:

- (a) the Land; and

- (b) the Development.

### **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 is excluded to the extent stated in Schedule 1.

## **4. Development Contribution**

### **4.1 Developer to provide Development Contribution**

The Developer undertakes to provide, or procure the provision of, the Development Contribution to the Minister or the Minister's nominee in accordance with the provisions of Schedule 4.

### **4.2 Acknowledgement**

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) will transfer one half of the Development Contribution to the City of Sydney, to be allocated to its Heritage Conservation Fund; and
- (b) in respect of the remaining half of the Development Contribution:
  - (i) will direct this portion towards heritage conservation works in Central Sydney, specifically to conserve State-owned heritage items in Central Sydney;
  - (ii) has no obligation to use or expend this portion for a particular heritage conservation project and has no obligation to repay any amounts to the Developer in connection with this deed; and
  - (iii) in circumstances where this portion is made or transferred to any NSW Government authority with responsibility for heritage conservation in Central Sydney, has not made any representation or warranty that the Development Contribution will or must be used for a particular heritage conservation project by that authority.

## **5. Interest**

### **5.1 Interest for late payment**

- (a) If the Developer fails to pay the Development Contribution due to the Minister by or on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

## **6. Enforcement**

### **6.1 Developer to provide Security**

The Developer has agreed to provide Security to the Minister for the performance of the Developer's obligations under this deed by:

- (a) agreeing to register this deed in accordance with clause 7; and



- (b) providing the Security in accordance with the terms and procedures set out in Schedule 5.

## **7. Registration**

### **7.1 Registration of deed**

- (a) The Developer agrees to procure the registration of this deed on the title to the Land by no later than:
  - (i) 28 December 2023; and
  - (ii) if the deed has not commenced by 28 December 2023, upon its commencement, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.
- (b) To procure registration of this deed as required in clause 7.1(a), the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
  - (i) the consent of each person, as required by the Registrar-General, who:
    - (A) has an estate or interest in the Land registered under the Real Property Act; or
    - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on the title to the Land and to the terms of this deed;
  - (ii) the execution of any documents; and
  - (iii) the electronic lodgement of this deed in a registrable form through an ELNO for registration by the Registrar-General in the relevant folio(s) of the Register for the Land.
- (c) The Developer is not required to comply with this clause 7.1 if it has paid the Development Contribution to the Minister in accordance with Schedule 4.

### **7.2 Evidence of registration**

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(b)(iii) within 10 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Minister with copies of the relevant folio(s) of the Register and the registered dealings containing this deed within 10 Business Days of receipt of notice of registration of this deed.

### **7.3 Release and discharge of deed**

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

### **7.4 Interest in Land**

The Developer represents and warrants that it is, as at the date of execution of this deed, able to compel any person referred to in or contemplated by clause 7.1(b)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with their obligations under clause 7.

## **7.5 Right to lodge caveat**

- (a) Subject to clause 7.5(b) until such time as this deed is registered on the title to the Land in accordance with clause 7.1, the Developer acknowledges that this deed confers on the Minister an interest in the Land and entitles the Minister to lodge and maintain a caveat on the title to the Land to prevent any Dealing in respect of the Land.
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
  - (i) ensure that the caveat does not prevent or delay the registration of this deed; and
  - (ii) remove the caveat from the title to the Land promptly, following registration of this deed in accordance with clause 7.1 or provision of the Development Contribution to the Minister, whichever occurs first.
- (c) If the Developer has failed or has been unable to achieve the registration of this deed in accordance with clause 7.1, the Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).

## **8. Dispute Resolution**

### **8.1 Not commence**

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

### **8.2 Written notice of dispute**

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

### **8.3 Attempt to resolve**

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

### **8.4 Mediation**

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

### **8.5 Court proceedings**

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute

resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

#### **8.6 Not use information**

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

#### **8.7 No prejudice**

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

### **9. GST**

#### **9.1 Definitions**

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

#### **9.2 Intention of the parties**

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

#### **9.3 Reimbursement**

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

#### **9.4 Consideration GST exclusive**

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.4.

#### **9.5 Additional Amounts for GST**

To the extent an amount of GST is payable on a supply made by a party (**Supplier**) under or in connection with this deed (the **GST Amount**), the recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a tax invoice to the Minister.

## 9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

## 9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

## 9.8 No merger

This clause does not merge on completion or termination of this deed.

## 10. Assignment and transfer

### 10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
  - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
  - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
  - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

### 10.2 Right to transfer Land

- (a) Subject to clause 10.2(b), the Developer must procure that Sydney Metro does not sell or transfer to another person (**Transferee**) the whole or any part of the Land:
  - (i) on which this deed remains registered under section 7.6 of the Act; or
  - (ii) for which a Development Contribution required under this deed remain outstanding.
- (b) Notwithstanding clause 10.2(a), Sydney Metro may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer Sydney Metro, or the Developer acting on behalf of Sydney Metro:
  - (i) satisfies the Minister, acting reasonably, that:
    - (A) the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Developer under this deed; or
    - (B) the Developer will continue to be bound by the terms of this deed after the transfer has been effected;

- (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer; and
  - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

### **10.3 Replacement Security**

Provided that:

- (a) the Developer has complied with clauses 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

## **11. Capacity**

### **11.1 General warranties**

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

### **11.2 Power of attorney**

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

## **12. Reporting requirement**

- (a) By 1 September each year or as otherwise agreed with the Secretary and until the Development Contribution is provided to the Minister, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
  - (i) a forecast in relation to the anticipated progression and completion of the Development; and
  - (ii) a forecast in relation to the anticipated Allocation of HFS.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

## **13. General Provisions**

### **13.1 Entire deed**

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

### **13.2 Variation**

This deed must not be varied except by a later written document executed by all parties.

### **13.3 Waiver**

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

### **13.4 Further assurances**

Each party must promptly execute all documents and do everything necessary or desirable to give full effect to the arrangements contained in this deed.

### **13.5 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 deed,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 5 pm on the specified day, it is taken to have been done on the following Business Day.

### **13.6 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

### **13.7 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 deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

### **13.8 Preservation of existing rights**

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

**13.9 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 deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

**13.10 Counterparts**

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

**13.11 Relationship of parties**

Unless otherwise stated:

- (a) nothing in this deed 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.

**13.12 Good faith**

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

**13.13 No fetter**

Nothing in this deed is to be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

**13.14 Explanatory note**

The Explanatory Note must not be used to assist in construing this deed.

**13.15 Expenses and stamp duty**

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must pay its own and the Minister's reasonable costs and disbursements in connection with the release and discharge of this deed with respect to any part of the Land pursuant to clause 7.3.
- (e) The Developer must pay the Minister by electronic funds transfer, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a), (b) and (d):

- (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
- (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

### 13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
  - (i) hand delivered; or
  - (ii) sent by prepaid ordinary mail within Australia; or
  - (iii) sent by email.
- (b) A Notice is given if:
  - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
  - (ii) sent by prepaid ordinary mail within Australia, on the date that is 7 Business Days after the date of posting; or
  - (iii) sent by email:
    - (A) before 5pm on a Business Day, on that Day;
    - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
    - (C) on a day that it is not a Business Day, on the next Business Day after it is sent,and the sender does not receive a delivery failure notice.

### 13.17 Electronic Execution

- (a) Each party consents to this deed and any variations of this deed being signed by electronic signature by the methods set out in this clause.
- (b) This clause applies regardless of the type of legal entity of the parties. If this deed or any subsequent variations are signed on behalf of a legal entity, the persons signing warrant that they have the authority to sign.
- (c) For the purposes of this clause, the parties agree that the following methods validly identify the person signing and indicate that person's intention to sign this deed and any variation of it:
  - (i) insertion of an image (including a scanned image) of the person's own unique signature on to the deed;
  - (ii) insertion of the person's name on to the deed; or
  - (iii) use of a stylus or touch finger or a touch screen to sign the deed,provided that in each of the above cases, words to the effect of '*Electronic signature of me, [NAME], affixed by me on [DATE]*' are also included on the deed;



- (iv) use of a reliable electronic signature and exchange platform (such as DocuSign or AdobeSign) to sign the deed; or
  - (v) as otherwise agreed in writing (including via email) between the parties.
- (d) The parties agree that the above methods are reliable as appropriate for the purpose of signing this deed and that electronic signing of this deed by or on behalf of a party indicates that party's intention to be bound.
- (e) A signed copy of this deed transmitted by email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this deed for all purposes.

## Schedule 1

**Table 1 - Requirements under section 7.4 of the Act (clause 2.2)**

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

<b>Requirement under the Act</b>	<b>This deed</b>
<b>Planning instrument and/or development application – (section 7.4(2))</b>  The Developer has: <ul style="list-style-type: none"> <li>(a) sought a change to an environmental planning instrument.</li> <li>(b) made, or proposes to make, a Development Application.</li> <li>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</li> </ul>	<ul style="list-style-type: none"> <li>(a) No</li> <li>(b) Yes</li> <li>(c) No</li> </ul>
<b>Description of land to which this deed applies – (section 7.4(3)(a))</b>	See Schedule 3
<b>Description of development to which this deed applies – (section 7.4(3)(b))</b>	See definition of Development in clause 1.1
<b>Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))</b>	Not applicable.
<b>The scope, timing and manner of delivery of contribution required by this deed – (section 7.4(3)(c))</b>	See Schedule 4.
<b>Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))</b>	The application of sections 7.11 and 7.12 of the Act <b>is not excluded</b> in respect of the Development.
<b>Applicability of section 7.24 of the Act – (section 7.4(3)(d))</b>	The application of section 7.24 of the Act <b>is not excluded</b> in respect of the Development.
<b>Consideration of benefits under this deed if section 7.11 applies – (section 7.4(3)(e))</b>	No
<b>Mechanism for dispute resolution – (section 7.4(3)(f))</b>	See clause 8
<b>Enforcement of this deed – (section 7.4(3)(g))</b>	See clause 5, clause 6 and clause 7

Requirement under the Act	This deed
<b>No obligation to grant consent or exercise functions</b> – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
<b>Registration of the Planning Agreement</b> – (section 7.6 of the Act)	Yes (see clause 7)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued</b> – (section 21 <a href="#">Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</a> )	No
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued</b> – (section 48 of <a href="#">Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</a> )	Yes (see clause 1.3(e) of Schedule 4)
<b>Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued</b> – (section 6.15(1)(d) of the Act)	No

## **Schedule 2 – Address for Service**

(clause 1.1)

### **Minister**

**Contact:** The Secretary

**Address:** Department of Planning and Environment  
Level 11, 4 Parramatta Square, 12 Darcy Street  
PARRAMATTA NSW 2150

**Email:** [planningagreements@planning.nsw.gov.au](mailto:planningagreements@planning.nsw.gov.au)

### **Developer**

**Contact:** The Company Directors and Secretary

**Address:** Pitt Street Developer North Pty Ltd  
c/- Investa  
Level 30, 420 George Street  
SYDNEY NSW 2000

**Email:** [abeaver@investa.com.au](mailto:abeaver@investa.com.au)

**Schedule 3 – Land**

(clause 1.1)

Lot	Deposited Plan	Landowner
20	1255509	Sydney Metro

## Schedule 4 - Development Contribution

(clause 4)

### 1. Development Contribution

#### 1.1 Development Contribution

- (a) The parties acknowledge and agree that the Developer:
- (i) must Allocate 23,125 square metres of HFS (**Required HFS**) in connection with the Development by the timing provided in Condition B11 of the Development Consent granted to SSD 10375; and
  - (ii) as at the date of this deed, has Allocated 8,857.74 square metres of HFS in connection with the Development.
- (b) The Developer undertakes to use reasonable endeavours to procure the Required HFS for Allocation by the timing provided in Condition B11 of the Development Consent granted to SSD 10375.
- (c) If the Developer has not Allocated the Required HFS by the timing provided in Condition B11 of the Development Consent granted to SSD 10375, it undertakes to provide the Development Contribution to the Minister or the Minister's nominee in the manner set out in the table below:

Monetary Contribution	Value	Timing
Development Contribution – Monetary contribution towards heritage conservation works in Central Sydney	\$2,147.35 per square metre of HFS that has not been Allocated by the timing provided in Condition B11 of the Development Consent granted to SSD 10375, calculated in accordance with clause 1.2 of this Schedule 4.	Pursuant to clause 1.3(a) of this Schedule 4

#### 1.2 Calculation of the value of the Development Contribution

The Development Contribution is an amount equal to "X" in the following formula:

$$X = (\text{Required HFS} - \text{Allocated HFS}) \times \$2,147.35$$

Where:

**"Allocated HFS"** means the number of square metres of HFS that the Developer has Allocated in connection with the Development.

#### 1.3 Payment of Development Contribution

- (a) The Developer must pay to the Minister or the Minister's nominee the Development Contribution by no later than:
- (i) 28 December 2023; and

(ii) if the deed has not commenced by 28 December 2023, upon its commencement.

In any case, the Development Contribution must be paid prior to the issue of the first Occupation Certificate for a building or part of a building in respect of the Development.

- (b) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to make the Development Contribution in accordance with this deed.
- (c) The Development Contribution is taken to be paid by the Developer when the Minister or Minister's nominee (as the case may be) receives the full amount of the contribution payable by a deposit, by means of electronic funds transfer, of cleared funds into a bank account nominated by the Minister or the Minister's nominee (as the case may be).
- (d) The parties acknowledge and agree that the Development Contribution is to be distributed equally to:
  - (i) the City of Sydney, to be allocated to the Heritage Conservation Fund; and
  - (ii) the Minister on behalf of the NSW Government for the purpose of heritage conservation works in Central Sydney.
- (e) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the first Occupation Certificate within the meaning of section 48 of *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

## Schedule 5 - Security

(clause 6.1)

### 1. Developer to provide Security

- (a) In order to secure the performance of the obligations of the Developer under this deed, the Developer has agreed to provide the Security to the Minister.
- (b) Each Security must:
  - (i) name the “Minister administering the *Environmental Planning and Assessment Act 1979*” and the “Department of Planning and Environment ABN 20 770 707 468” as the relevant beneficiaries;
  - (ii) be in the amount as set out in the table below;
  - (iii) be security for the Secured Obligation as set out in the table below; and
  - (iv) not have an expiry date.

Security Amount	Secured Obligation
\$200,000 ( <b>Base Security</b> )	All obligations imposed on the Developer under this deed.
An amount that equals the value of the Development Contribution calculated in accordance with clause 1.2 of Schedule 4 ( <b>HFS Security</b> )	All obligations imposed on the Developer under this deed.

- (c) If an Administrative Arrangements Order (within the meaning of Part 7 of the *Constitution Act 1902*) is made affecting the Department of Planning and Environment before the relevant Security is provided under this Schedule, the Security is to name the agency that the Secretary advises the Developer in writing is to be a beneficiary in addition to the Minister.

### 2. Base Security

- (a) At the time the Developer signs this deed, the Developer must provide the Base Security to the Minister in order to secure the performance of all obligations of the Developer under this deed when it is executed by the Minister.
- (b) From the date the Developer executes this deed until the date that the Developer has performed all of its obligations under this deed, the Minister is entitled to retain the Base Security and call upon it in the circumstances set out in clause 4 of this Schedule 5.

### 3. HFS Security

- (a) The Developer must provide the HFS Security to the Minister by:
  - (i) 28 December 2023; and
  - (ii) if the deed has not commenced by 28 December 2023, upon its commencement,



to secure the Developer's obligations under this deed. The parties acknowledge that, as at the date of this deed, the Security Amount for the HFS Security is \$30,636,800.80.

- (b) From the date the HFS Security is to be provided under this deed until the date that the Developer has performed all of its obligations under this deed, the Minister is entitled to retain the HFS Security and call upon it in the circumstances set out in clause 4 of this Schedule 5.
- (c) The Developer is not required to comply with this clause 3 of Schedule 5 if it has provided the Development Contribution to the Minister in accordance with Schedule 4.

#### **4. Claims under Security**

- (a) The Minister may:
  - (i) call upon the Security provided in accordance with this deed where the Developer has failed to fulfil the Secured Obligation in accordance with this deed; and
  - (ii) retain and apply such monies towards any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
  - (i) the Minister calls upon the Security; and
  - (ii) applies all or part of such monies towards and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
  - (iii) has notified the Developer of the call upon the Security in accordance with clause 4(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 5 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security Amount.

#### **5. Release of Security**

If:

- (a) the Developer has paid or satisfied all of its obligations under this deed secured by the Security, including provision of the Development Contribution in accordance with this deed; and
- (b) the whole of the money secured by the Security has not been expended and the money accounted for in accordance with clause 4 of this Schedule 5,

then the Minister will promptly return the Security (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Security (as the case may be), to the Developer.

Execution page

Executed as a deed

Signed, sealed and delivered by the Minister administering the *Environmental Planning and Assessment Act 1979* (ABN 20 770 707 468), in the presence of:

.....  
Signature of witness

.....  
Signature of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*

.....  
Name of witness in full

.....  
Name of delegate of the Minister administering the *Environmental Planning and Assessment Act 1979*


.....  
Address of witness

\*By signing this deed, the witness states that they witnessed the signing of this deed by:

.....  
(being the name of the Minister’s delegate) over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the *Electronic Transactions Act 2000*.

Signed, sealed and delivered by **Pitt Street Developer North Pty Ltd** (ACN 635 396 824) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

DocuSigned by:



9A42766DB3B44F8...


Signature of Director

Alec Harper

.....

Name of Director in full

DocuSigned by:



9A04A26489ED4AF...

Signature of Director/Secretary

Ingrid Costello

.....

Name of Director/Secretary in full