

From: Daniel Grollo
Sent: Wed, 24 Jul 2019 13:41:44 +1000
To: Tim Robertson

Document tendered by Simon Draper
Received by Rachel Buist
Date: 11 / 11 / 2022
Resolved to publish Yes / No

Tim

Further to our discussions yesterday regarding the proposed transfer of Grocon's development rights over Central Barangaroo to Aqualand ("the Transaction")

As I understand it, Aqualand have sought as a condition precedent to closing the Transaction (which requires BDA consent to be granted), a letter from BDA addressed to the Aqualand Step-in Party and each other Step-in Party with regards to non-exercise of BDA's rights on an Insolvency Event in relation to, or other material default of, Grocon Constructors Pty Ltd (as General Guarantor) or Grocon Group Holdings Pty Ltd (as Office Guarantor) vis-à-vis a Step-in Party during the term of its step-in (BDA Confirmation)

I note your advice that BDA is only prepared to provide the BDA Confirmation to Aqualand if Grocon provides BDA with a release of any claims Grocon may have against BDA in relation to its role in Central Barangaroo (particularly the claims relating to the sight lines issues).

In order for Grocon to understand and properly evaluate what is required can you please provide:

- (a) a copy of the form of the BDA Confirmation letter being sought by AQL; and
- (b) a copy of the form of release being sought by BDA from Grocon as a condition of BDA executing and delivering the BDA Confirmation

I look forward to your early response

Daniel

Daniel Grollo | Chairman & CEO | Grocon

L1, 577 Little Bourke Street, Melbourne VIC 3000
www.grocon.com



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This e-mail is confidential, solely for the benefit of the person(s) for whom it was intended and may be privileged. You should only read, print, copy, modify, forward or commercialise it if it was intended for you and you are authorised to do so. If you have received it in error please delete it and notify me by e-mail immediately. Grocon does not warrant that it is free of error, virus or interference.

From: Tim Robertson
Sent: Fri, 26 Jul 2019 10:27:35 +1000
To: Simon Draper - Department of Premier and Cabinet
Tom Gellibrand
Cc: Phil Paris;Brad Kelman
Subject: FW: CB INSW / BDA Confirmation Letter
Attachments: Request for Confirmation under the CENDA and MUPID VF.pdf,
655917015_7_DRAFT - BDA Confirmation Letter [25 July 2019].docx

Simon/Tom,

Last night we received the attached proposal from Oxford Properties in relation to the proposed step-in for the development rights for Central Barangaroo.

Oxford, in its cover letter, does not concede that the waiver on the guarantors is required, but has none the less sought a confirmation from INSW that it will not rely on, enforce or otherwise exercise any rights against the step in party (Aqualand) in relation to a default by the General Guarantor (Grocon).

We have sought legal advice today on the proposal and related matters, including the drafting of a general release from Grocon and Oxford, and a release all parties in relation to the Oxford Comfort letter – the latter all have agreed to provide previously. We expect to be in a position to brief you on Monday afternoon.

Please let me know if you would like any further information in the interim.

Regards

Tim Robertson
Executive Director, Strategy & Operations

AON Tower, Level 27, 201 Kent Street
Sydney NSW 2000 Australia

www.barangaroo.com



From: Jonathan Quan
Sent: Thursday, 25 July 2019 10:01 PM
To: Tim Robertson

Phil Paris

Cc: Gawain S.E. Smart
David Matheson
Leonard Blundell

Subject: CB INSW / BDA Confirmation Letter

Dear Tim and Phil, following various conversations and meetings with Gawain, please find attached:

- A letter formalizing our request that INSW deliver the Confirmation, substantially in the form attached (the "Confirmation"); and
- The Confirmation, for your review.

We look forward to hearing from you and discussing next steps. Best Regards, Oxford

Jonathan Quan, MRICS | Director, Investments - Asia Pacific | Oxford Properties Group | OMERS

Singapore: OMERS Asia Pte Ltd | One Raffles Quay, #30 - 02 | North Tower | Singapore 048583

Sydney: OMERS Sydney | Deutsche Bank Place | Level 19, Suite 19.02, 126 Phillip St | Sydney, NSW 2000 | Australia



OXFORD PROPERTIES MANAGEMENT AUSTRALIA PTY LTD
ABN 12627186092

Deutsche Bank Place
Level 19, Suite 19.02, 126 Phillip Street
Sydney
NSW 2000
Australia

www.oxfordproperties.com



BY EMAIL

Infrastructure New South Wales
(Formerly Barangaroo Delivery Authority)
Level 27
201 Kent Street
Sydney, NSW 2000

RE: Confirmation under the CENDA and MUPID (the "Confirmation") - attached herewith.

Attention: Mr. Tim Robertson

Dear Sirs:

We are writing in connection with the Transaction (the "Transaction") that has been entered into involving the transfer of all of Grocon's development and associated rights at Central Barangaroo to Aqualand, in which Oxford as a secured creditor of Grocon is an interested party in the arranging and securing the completion of such Transaction.

As you may know, the Transaction is scheduled to close at or after the end of this month and is expected to rationalize ownership at Central Barangaroo to allow the development to be unlocked and proceed as soon as a Sight Lines Resolution Notice has been issued by the BDA.

The parties have been working for many months to arrive at the foregoing agreement and feel that the arrangement accomplishes the following:

1. Provides for a common ownership of the office owner and developer to better align the development;
2. Eliminates the uncertainty in the development caused by the disagreements between the existing consortium members and allows this state significant project to proceed once sightlines have been issued;
3. Stabilizes Grocon financially; and
4. Eliminates the risk of protracted litigation, should the current situation continue without resolution, lifting any cloud over ownership.

While the first point is critical in seeing the development proceed, the fourth point is more critical, in that a failure to proceed would mean lengthy litigation that could see the consortia parties and the BDA tied-up in a further costly and time-consuming dispute, particularly following a potential resolution of the current LendLease / Crown dispute.

It is on the foregoing basis that we write to you asking that INSW deliver the Confirmation in substantially the form attached. While no party believes the Confirmation is necessary, it is desirable from Aqualand's perspective to clear up any ambiguity on the step-in process that could hinder future financing or cloud ownership.

For these reasons we ask that the attached Confirmation be considered with the utmost urgency and that we speak to confirm next steps once reviewed.

Kind Regards,

Gawain S.E. Smart
OXFORD PROPERTIES MANAGEMENT AUSTRALIA PTY LTD

CC:
John Easy, Grocon Group
Leonard Blundell, Aqualand



Barangaroo
Delivery
Authority

Barangaroo Delivery Authority
111 Pitt Street
Sydney NSW 2000 Australia
ABN 94 567 807 277

[Allens note: Letterhead, signatory and references to the Authority to be updated, given the changes to the BDA / Infrastructure NSW.]

Private & Confidential

July 2019

[The Company Secretary]

Aqualand B Development Holding Pty Ltd
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By courier and by email:

[The Company Secretary]

Aqualand Management Services Pty Ltd
as trustee of the Aqualand Trust
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By courier and by email:

Yi Lin
Shanghai Shenglong Investment Group
Limited Company
37th Floor Taiping Financial Tower
No. 488 Yincheng Zhonglu
Pudong New District
SHANGHAI

By courier and by email:

[The Company Secretary]

Aqualand Development 2 Pty Limited
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By courier and by email:

[The Company Secretary]

Aqualand Development 5 Pty Limited
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By courier and by email:

The Company Secretary
Scentre Design and Construction Pty Limited
Level 30, 85 Castlereagh Street
SYDNEY NSW 2000

By courier and by email:

The Office Investors (as defined in the MUPID)
from time to time

Dear Sirs

Confirmation regarding Material Default under the MUPID and CENDA following Step-in

We refer to:

1. the First Deed of Amendment – Central Barangaroo Development Agreement dated 15 November 2017 (**CENDA**) between Barangaroo Delivery Authority (**Authority**), Grocon (CB) Developments Pty Limited (**Developer**), Grocon Constructors Pty Ltd (**General Guarantor**) and Grocon Group Holdings Pty Limited (**Office Guarantor**); and
2. the First Deed of Amendment and Accession to Multi-party Investor Side Deed – Central Barangaroo dated 15 November 2017 (**MUPID**) between the Authority, Developer, General Guarantor, Office Guarantor, Aqualand B Development Holding Pty Ltd (**Aqualand**), Aqualand Management Services Pty Ltd, Aqualand Development 2 Pty Limited, Aqualand Development 5 Pty Limited, WSF Fund Pty Limited, RE1 Limited, Scentre Design and Construction Pty Limited (**Retail Step-in Party**), Scentre Group Limited (**Retail Step-in Party Guarantor**) and others.

Capitalised words in this letter have the meaning given to them in the CENDA and the MUPID unless stated otherwise in this letter.

1. Step-In

The Authority notes that, following a step-in by a Step-in Party under the MUPID:

- (a) the relevant Step-in Party will be entitled to each of the rights, and must observe all of the obligations, of the Developer under the CENDA; and
- (b) under the CENDA:
 - (i) the Authority may issue a notice to a Step-In Party (as the Developer) under clause 49.5 of the CENDA if a Default Event has occurred before Project Practical Completion;
 - (ii) a Default Event includes a Material Default; and
 - (iii) while references to the 'Developer' are replaced with references to the relevant Step-In Party following a step-in under the MUPID, a Material Default under the CENDA includes the occurrence of an Insolvency Event in relation to the General Guarantor or Office Guarantor (being Grocon entities).

2. Confirmation

While the CENDA does not specifically exclude the occurrence of an Insolvency Event of the General Guarantor or Office Guarantor as a Default Event or a Material Default after step-in by a Step-in Party, it is not the intention for the occurrence of an Insolvency Event of the General Guarantor or Office Guarantor following step-in by a Step-in Party to permit the development rights under the CENDA to be taken from the relevant Step-in Party.

Accordingly the Authority acknowledges and agrees for the benefit of each Step-In Party that after a step-in by the relevant Step-in Party under the MUPID, the Authority will not rely on, enforce or otherwise exercise any rights against the relevant Step-In Party in relation to:

- (a) the occurrence of any Insolvency Event in relation to; or
- (b) any other Material Default of,

the General Guarantor or Office Guarantor, including the issuing of a Material Default Notice to the Step-In Party. Nothing in this letter limits the enforcement or exercise of any rights by the Authority against the General Guarantor or Office Guarantor.

3. Reliance

The Authority acknowledges each Step-in Party will rely on this confirmation in relation to the Central Barangaroo development.

Yours sincerely

Simon Draper
Acting Chief Executive Officer

The Acting Chief Executive Officer of the Authority executes this letter in the name of, and on behalf of, the Authority.

From: Jonathan Quan
Sent: Mon, 29 Jul 2019 14:56:47 +1000
To: Gawain S.E. Smart; Tim Robertson; Phil Paris
Cc: David Matheson; Leonard Blundell; Megan Kinsella
Subject: RE: CB INSW / BDA Confirmation Letter
Attachments: 656527855_5_Central Barangaroo_Timeline 29 July 2019.pdf

Hi Tim, further to our call and the below, please see attached. Best,

Jonathan Quan, MRICS | Director, Investments - Asia Pacific | Oxford Properties Group | OMERS

Singapore: OMERS Asia Pte Ltd | One Raffles Quay, #30 - 02 | North Tower | Singapore 048583
 Sydney: OMERS Sydney | Deutsche Bank Place | Level 19, Suite 19.02, 126 Phillip St | Sydney, NSW 2000 | Australia

From: Gawain S.E. Smart
Sent: 26 July 2019 20:06
To: Tim Robertson Jonathan Quan
 Phil Paris
Cc: David Matheson ; Leonard Blundell
 Megan Kinsella
 Jonathan Quan
Subject: RE: CB INSW / BDA Confirmation Letter

We will get you something on Monday. For confidentiality reasons, we will leave party names out, but think we can share something that gives overall sense of timing and sequencing.

From: Tim Robertson
Sent: Friday, July 26, 2019 11:02 AM
To: Jonathan Quan; Phil Paris
Cc: Gawain S.E. Smart; David Matheson; Leonard Blundell;
Subject: RE: CB INSW / BDA Confirmation Letter

Hi Jonathan,

Confirming receipt. Thank you.

To assist our assessment the proposal, could the parties please agree and provide us with a simple program/process flow chart for the transaction from here through to full execution? Thanks.

Regards

Tim Robertson
 Executive Director, Strategy & Operations

AON Tower, Level 27, 201 Kent Street
 Sydney NSW 2000 Australia

www.barangaroo.com



From: Jonathan Quan
Sent: Thursday, 25 July 2019 10:01 PM
To: Tim Robertson

Phil Paris

Cc: Gawain S.E. Smart
David Matheson
Leonard Blundell

Subject: CB INSW / BDA Confirmation Letter

Dear Tim and Phil, following various conversations and meetings with Gawain, please find attached:

- A letter formalizing our request that INSW deliver the Confirmation, substantially in the form attached (the "Confirmation"); and
- The Confirmation, for your review.

We look forward to hearing from you and discussing next steps. Best Regards, Oxford

Jonathan Quan, MRICS | Director, Investments - Asia Pacific | Oxford Properties Group | OMERS

Singapore: OMERS Asia Pte Ltd | One Raffles Quay, #30 - 02 | North Tower | Singapore 048583
Sydney: OMERS Sydney | Deutsche Bank Place | Level 19, Suite 19.02, 126 Phillip St | Sydney, NSW 2000 | Australia

TRANSACTION STEPS / PROPOSED TIMELINE – CENTRAL BARANGAROO

29 JULY 2019

Commercial-in-confidence

Current status – Exeter has entered into binding arrangements with Kensington and Rome with a view to Kensington taking over Rome's development and associated rights at Central Barangaroo. Completion of the transaction will result in a step in by Kensington as the developer for the Central Barangaroo project.



Step 1. Exeter and Kensington enter into an escrow arrangement – expected to be entered into in the week commencing 29 July 2019

An escrow arrangement will be entered into between Exeter and Kensington under which the relevant transaction documents will be executed by the parties and held in escrow.



Step 2. Satisfaction of conditions precedent – expected to occur on or about 31 July 2019

The parties have agreed to use reasonable endeavors to ensure that the documents referred to above and any other conditions precedent to the transaction are satisfied by 30 July 2019 (with conditions precedent expected to be satisfied on around that date). The conditions precedent include the delivery of the "Confirmation" by Infrastructure NSW.



Step 3. Payment of consideration by Kensington into escrow (within 10 Business Days of satisfaction of conditions precedent) – expected to occur on or around 15 August 2019 (based on conditions precedent being satisfied on 31 July 2019)

Following delivery of all of the transaction documents into escrow and satisfaction of all the conditions precedent to the transaction, Kensington will pay a transaction fee into escrow. The transaction fee is required to be paid into escrow within 10 Business Days after satisfaction of the conditions precedent.



Step 4. Release of transaction documents from escrow (over an 8 Business Day period following receipt of the transaction fee by the escrow agent) – expected to occur from 16 August to 27 August 2019 (based on consideration being received on 15 August 2019)

Following receipt of the transaction fee into escrow, transaction documents will be released from escrow sequentially over an 8 Business Day period.

The release of documents over a period of 8 Business Days has been agreed in order to effect an arrangement under which certain steps can be taken and notices issued which will result in the trigger of Kensington's step in rights under the existing project documents.



Step 4. Release of transaction fee from escrow and financial close (Business Day 8) – expected to occur on or around 27 August 2019 (based on Step 3 commencing 16 August 2019)

Following the completion of the release sequence described in Step 4 and on release of the final documents, financial close will occur and the transaction fee will be released from escrow.

RE: CB INSW / BDA Confirmation Letter

From: Tim Robertson
To: Leonard Blundell, David Matheson, Daniel Grollo
Cc: Gawain S.E. Smart, Jonathan Quan, John Carfi, Brad Kelman, Phil Paris, Janine Lonergan
Date: Thu, 29 Aug 2019 16:16:57 +1000
Attachments: INSW Confirmation Letter _290819.pdf (144.81 kB); Deed of Release - Oxford Comfort Letter.docx (97.59 kB)

Leonard, David, and Daniel,

I refer to the correspondence received from Oxford Properties on 25 July 2019, and copied to Aqualand and Grocon, seeking a confirmation that INSW would not seek to rely on, enforce or otherwise exercise any rights against the step in party in relation to a default by the General Guarantor.

I refer also to email correspondence received from Mr Grollo on 24 July 2019 regarding the same matter.

Please see the attached correspondence from INSW.

Regards

Tim Robertson
 Executive Director, Strategy & Operations
 Infrastructure NSW

www.insw.com

AON Tower Level 27, 201 Kent Street, Sydney NSW 2000



On 1 July 2019 the Barangaroo Delivery Authority was abolished with its functions transferring to Infrastructure NSW.

From: Jonathan Quan
Sent: Thursday, 25 July 2019 10:01 PM
To: Tim Robertson
Cc: Gawain S.E. Smart, Leonard Blundell
Subject: CB INSW / BDA Confirmation Letter

Phil Paris
 David Matheson

Dear Tim and Phil, following various conversations and meetings with Gawain, please find attached:

- A letter formalizing our request that INSW deliver the Confirmation, substantially in the form attached (the "Confirmation"); and
- The Confirmation, for your review.

We look forward to hearing from you and discussing next steps. Best Regards, Oxford

Jonathan Quan MRICS | Director, Investments - Asia Pacific | Oxford Properties Group | OMERS

Singapore: OMERS Asia Pte Ltd | One Raffles Quay #30 - 11/ North Tower | Singapore 048583
 Sydney: OMERS Sydney | Deutsche Bank Place | Level 19, Suite 19.02, 126 Phillip St | Sydney, NSW 2000 | Australia

Deed of Release - Oxford Comfort Letter

Infrastructure NSW
INSW

The Oxford entities named as parties

The Aqualand entities named as parties

Clayton Utz
Lawyers
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001

www.claytonutz.com

Our reference 170/15661/80128948

L\332116328.7



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Deed of Release - Oxford Comfort Letter

Date

2019

Parties

Infrastructure NSW of Macquarie House, Level 15, 167 Macquarie Street,
Sydney NSW 2000 (**INSW**), email: _____ and

Hines (Aus) Investment Services Pty Ltd ACN 169 230 335 as trustee for
OPG Central Barangaroo 5 Trust of Level 11, 20 Hunter Street, Sydney NSW 2000
(**Hines (Aus) 5**), email: _____

Hines (Aus) Investment Services Pty Ltd ACN 169 230 335 as trustee for
OPG Central Barangaroo 6 Trust of Level 11, 20 Hunter Street, Sydney NSW 2000
(**Hines (Aus) 6**), email: _____

Oxford Australia Office Finance Pty Ltd ACN 628 043 498 of Level 19,
Suite 19.02, 126 Phillip Street, Sydney NSW 2000 (**Oxford Finance**),
email: _____ and

Oxford Properties Management Australia Pty Limited ACN 627 186 092 of
Level 19, Suite 19.02, 126 Phillip Street, Sydney NSW 2000
(**Oxford Management**), email: _____ and

Aqualand B Development Holding Pty Ltd ACN 612 713 916 of Tower 1,
Level 47, 100 Barangaroo Avenue, Barangaroo, Sydney NSW 2000 (**Aqualand**),
email: _____

Aqualand Development 2 Pty Limited ACN 606 732 674 of Tower 1,
Level 47, 100 Barangaroo Avenue, Barangaroo, Sydney NSW 2000
(**First Aqualand Nominee**), email: _____

Aqualand Development 5 Pty Limited ACN 615 571 205 of Tower 1,
Level 47, 100 Barangaroo Avenue, Barangaroo, Sydney NSW 2000
(**Second Aqualand Nominee**), email: _____

Aqualand Management Services Pty Ltd ACN 600 931 682 as trustee of the
Aqualand Trust (ABN 82 205 186 234) of Level 29, 225 George Street,
Sydney NSW 2000 (**First Aqualand Developer Guarantor**),
email: _____

Background

- A. At the request of the Developer, the Barangaroo Delivery Authority issued the Oxford Comfort Letter concerning development on Central Barangaroo.

- B. The Barangaroo Delivery Authority has been dissolved and its assets, rights and liabilities (all as defined under the State Revenue and Other Legislation Amendment Act No 8 of 2019 (NSW)) have been transferred to INSW as and from 1 July 2019.
- C. The Oxford Parties and the Aqualand Parties have agreed to grant to INSW releases of Liability arising out of or in connection with the Oxford Comfort Letter on the terms set out in this deed.

Operative provisions

1. Interpretation

1.1 Definitions

In this deed:

Aqualand Parties means:

- (a) Aqualand;
- (b) the First Aqualand Nominee;
- (c) the Second Aqualand Nominee; and
- (d) the First Aqualand Guarantor.

CENDA means the Central Barangaroo Project Development Agreement dated 15 November 2017 between the Barangaroo Delivery Authority (now being INSW), the Developer, the Developer General Guarantor and the Developer Land Payment Guarantor, as amended by a deed of amendment also dated 15 November 2017.

Central Barangaroo means that part of the land within Folio Identifier 101/1204946 designated by INSW as Central Barangaroo.

Claims includes any claim for payment, Loss, damage or expense and any actions, suits, causes of action, debts, dues costs, claims or demands under contract, at law, in equity or under statute.

Developer means Grocon (CB) Developments Pty Limited ACN 614 118 642.

Effective Date means the date of this deed.

Liability means all liabilities, Losses, Claims, damages, outgoing, costs and expenses of whatever description.

Loss means any loss whether:

- (a) arising from or in connection with any Claim or not;
- (b) liquidated or not;
- (c) present, prospective or contingent; or
- (d) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

MaxCap means MaxCap Investment Management Pty Ltd ACN 169 902 005 as trustee for the MaxCap Barangaroo Unit Trust of Level 33, 360 Collins Street, Melbourne, Victoria 3000.

Multi-party Investor Side Deed means the "Multi-party Investor Side Deed - Central Barangaroo" between the Barangaroo Delivery Authority the Developer, Grocon Constructors Pty Ltd, Grocon Group Holdings Pty Limited, the Aqualand Parties, WSF Fund Pty Limited, RE1 Limited, Scentre Design and Construction Pty Limited, Scentre Group Limited and Grocon (CB) Management Pty Limited, dated 20 December 2016 and amended by "First Deed of Amendment and Accession to Multi-party Investor Side Deed - Central Barangaroo" between the parties dated 15 November 2017.

Oxford Comfort Letter means the letter entitled "Sight Lines Negotiations" from the Barangaroo Delivery Authority to the Developer dated 20 September 2018.

Oxford Parties means:

- (a) Hines (Aus) 5;
- (b) Hines (Aus) 6; and
- (c) Oxford Finance; and
- (d) Oxford Management.

OMERS means OMERS Administration Corporation, 900-100 Adelaide St W, Toronto Ontario Canada.

Related Entity of a corporation:

- (a) means:
 - (i) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act; and
 - (ii) a unit trust in relation to which that corporation directly or indirectly:
 - A. controls the right to appoint the trustee;
 - B. is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
 - C. holds or is in a position to control the disposal of more than one half of the issued units of the trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); and
- (b) includes:
 - (i) all affiliates of that corporation; and
 - (ii) (in the case of the Oxford Parties) affiliates including OMERS and MaxCap.

1.2 Interpretation

In this deed unless the context indicates a contrary intention:

- (a) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

- (b) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of , and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (h) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (i) "includes" in any form is not a word of limitation; and
- (j) a reference to "\$" or "dollar" is to Australian currency.

1.3 No contra proferentum

In the interpretation of this deed, no rule of construction will apply to disadvantage a party because that party proposed a provision of this deed or the Agreement itself.

1.4 Headings

Headings are included for convenience only and do not affect the construction or interpretation of this deed.

2. Release and acknowledgment

2.1 Release by Oxford Parties

On and from the Effective Date:

- (a) the Oxford Parties (on behalf of themselves and all Related Entities) release INSW from all Liability (known and unknown) arising from or in connection with the Oxford Comfort Letter; and
- (b) the Oxford Parties must procure that none of their Related Entities makes any Claim against INSW in relation to anything contained in the Oxford Comfort Letter or in relation to the granting of releases relating to the Oxford Comfort Letter under this deed.

2.2 Acknowledgement by Aqualand Parties

On and from the Effective Date:

- (a) the Aqualand Parties (on behalf of themselves and all of their Related Entities) acknowledge and agree that they do not rely on any commitment, representation or statement by INSW made in the Oxford Comfort Letter in acquiring any interest under the CENDA, the Multi-party Investor Side Deed and will not acquire any benefit under the Oxford Comfort Letter upon becoming the Developer, Block 5 Office Investor or the Block 6 Office Investor;
- (b) the Aqualand Parties (on behalf of themselves and all Related Entities) release INSW from all Liability (known and unknown) arising from or in connection with the Oxford Comfort Letter; and
- (c) the Aqualand Parties must procure that none of their Related Entities makes any Claim against INSW in relation to anything contained in the Oxford Comfort Letter or in relation to the granting of releases relating to the Oxford Comfort Letter under this deed.

3. Representations and warranties

3.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

3.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

3.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

4. Trustee limitation of liability

4.1 Oxford Trustee Provision

- (a) For the purposes of this clause 4.1:

Trustee means Hines (Aus) Investment Services Pty Ltd (ACN 169 230 335).

Trust means each trust known as the OPG Central Barangaroo 5 Trust and the OPG Central Barangaroo 6 Trust, constituted by Trust Deed.

Trust Deed means each of the trust deeds OPG Central Barangaroo 5 Trust Trust Deed and OPG Central Barangaroo 6 Trust Trust Deed dated 30 June 2018.

- (b) The Trustee enters into this deed in its capacity as trustee of each Trust and in no other capacity.
- (c) The parties acknowledge that the Trustee incurs the Trustee Liabilities solely in its capacity as trustee of each Trust.
- (d) A Trustee Liability may be enforced against the Trustee only to the extent to which:

- (i) the Trustee, having exercised its right of indemnity, is actually indemnified in respect of that Trustee Liability out of the property of the Trust; and
 - (ii) there is sufficient property held by the Trustee as trustee at the time, which is available to meet that indemnity (after all Trust assets have been allocated to meet the indemnity and any other valid claims).
- (e) No person will be entitled to:
- (i) claim from or commence proceedings against the Trustee in respect of any Trustee Liability in any capacity other than as trustee of each Trust;
 - (ii) enforce or seek to enforce any judgment in respect of any Trustee Liability against any property of the Trustee other than property held by the Trustee as trustee of each Trust;
 - (iii) take any steps to procure or support the appointment of a liquidator, administrator or any other similar office holder to the Trustee on the basis of a Trustee Liability, or prove in any liquidation, administration or arrangement of or affecting the Trustee; or
 - (iv) in respect of a Trustee Liability, appoint or take any steps to procure or support the appointment of a receiver or receiver and manager to any property of the Trustee, other than property which is held by it in its capacity as trustee of each Trust.
- (f) The restrictions in clauses 4.1(d) and 4.1(e) do not apply to any Trustee Liability to the extent to which there is, whether under a Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or in respect of which the Trustee is not entitled to be indemnified, out of the property of a Trust, as a result of the Trustee's fraud, gross negligence or wilful default or wilful misconduct.
- (g) This limitation of Trustee Liability applies to this deed despite any other provisions of this deed and extends to all Trustee Liabilities of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed or its performance.
- (h) In this clause 4.1, **Trustee Liability** means any liability or obligation (of any kind including, without limitation, for negligence, in tort, in equity, or under statute) of the Trustee which arises in any way under or in connection with this deed or its performance, or any representation, warranty, conduct, omission, agreement or transaction made under or in connection with this deed or its performance.

4.2 First Aqualand Developer Guarantor - limitation on liability

- (a) This limitation of the First Aqualand Developer Guarantor's liability applies despite any other provision of this deed and extends to all Obligations of the First Aqualand Developer Guarantor in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) The First Aqualand Developer Guarantor enters into this deed as trustee of the Trust and in no other capacity.
- (c) The parties acknowledge that the First Aqualand Developer Guarantor incurs the Obligations solely in its capacity as trustee of the Trust.
- (d) Subject to clause 4.2(h), the First Aqualand Developer Guarantor will not be liable to pay or satisfy any Obligations except out of the Assets of the Trust against which it is actually indemnified in respect of any liability incurred by it.

- (e) Subject to clause 4.2(h), the other parties may enforce their rights against First Aqualand Developer Guarantor arising from non-performance of the Obligations only to the extent of the First Aqualand Developer Guarantor's right of indemnity out of the Assets of the Trust.
- (f) Subject to clause 4.2(h), if the other parties do not recover all money owing to them arising from non-performance of the Obligations they may not seek to recover the shortfall by:
 - (i) bringing proceedings against the First Aqualand Developer Guarantor in its personal capacity; or
 - (ii) applying to have the First Aqualand Developer Guarantor put into administration or wound up or applying to have a receiver or similar person appointed to the First Aqualand Developer Guarantor or proving in the administration or winding up of the First Aqualand Developer Guarantor.
- (g) Subject to clause 4.2(h), the parties other than the First Aqualand Developer Guarantor waive their rights and release the First Aqualand Developer Guarantor from any personal liability whatsoever, in respect of any loss or damage:
 - (i) which they may suffer as a result of any:
 - A. breach by the First Aqualand Developer Guarantor of any of its Obligations; or
 - B. non-performance by the First Aqualand Developer Guarantor of the Obligations; and
 - (ii) which cannot be paid or satisfied out of the Assets of the Trust of which the First Aqualand Developer Guarantor is entitled to be indemnified.
- (h) The other parties acknowledge that this deed is subject to this clause 4.2(h) and the First Aqualand Developer Guarantor will in no circumstances be required to satisfy any liability of the First Aqualand Developer Guarantor arising under, or for non-performance or breach of any Obligations under or in respect of, this deed or under or in respect of any other document to which it is expressed to be a party out of any funds, property or assets other than the Assets of the Trust under the First Aqualand Developer Guarantor's control and in its possession as and when they are available to the First Aqualand Developer Guarantor to be applied in exoneration for such liability provided that if the liability of the First Aqualand Developer Guarantor is not fully satisfied out of the Assets of the Trust as referred to in clause 4.2(h), the First Aqualand Developer Guarantor will be liable to pay out of its own funds, property and assets the unsatisfied amount of that liability but only to the extent of the total amount, if any, by which the Assets of the Trust have been reduced by reason of fraud, negligence or breach of trust by the First Aqualand Developer Guarantor in the performance of the First Aqualand Developer Guarantor's duties as trustee of the Trust.
- (i) No attorney, agent or other person appointed in accordance with this deed has authority to act on behalf of the First Aqualand Developer Guarantor in a way which exposes First Aqualand Developer Guarantor to any personal liability.
- (j) Despite any other provision of this deed, the First Aqualand Developer Guarantor is not obliged to enter into any documents contemplated by this deed which it is asked or required to sign unless its liability is limited in the manner set out in this clause 4.2.
- (k) In this clause 4.2:

Assets includes all assets, property and rights real and personal of any value whatsoever;

Obligations means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the First Aqualand Developer Guarantor under or in respect of this deed; and

Trust means the "Aqualand Trust" (ABN 82 205 186 234).

5. Notices

5.1 How to give a notice

A notice, consent or other communication under this deed is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (ii) sent by email in the form of a .pdf file of a letter (with or without attachments) to that person's email address.

5.2 Time of receipt of notices

A notice, consent or other communication that complies with this clause 5 is regarded as given and received:

- (a) if it is sent by mail:
 - (i) within Australia - 5 Business Days after posting; or
 - (ii) to or from a place outside Australia - 10 Business Days after posting; and
- (b) if it is sent by email:
 - (i) by 5:00pm (local time in the place of receipt) on a Business Day - at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the party sending the email from the recipient; or
 - (ii) after 5:00pm (local time in the place of receipt) on a Business Day, or a day that is not a Business Day - on the Business Day following the date on which it is sent equivalent to the date shown on the automatic receipt notification received by the party sending the email from the recipient.

5.3 Address for Notices

For the purposes of this clause 5, a person (the sender) may take the address or email address of another person (the recipient) to be the address or email address set out on the first page of this deed unless a different address or email address is notified by the recipient to the sender, then to the last so notified address or email address.

5.4 Communications by email

With respect to communications sent by email:

- (a) only the letter in .pdf format attached to the email and, subject to clause 5.4(b), any attachments to such letter which are referred to in the letter, will form part of the communication under this clause 5. Any text in the body of the email or the subject line will not form part of the communication;
- (b) an attachment to an email referred to in clause 5.1(c) will only form part of a communication under this clause 5 if it is in *.pdf, *.xls, *.doc, *.vsd, *.mpp, *.mdb, *.xer or *.ppt format, or such other format as may be agreed between the parties from time to time; and
- (c) the parties agree, with respect to any communications under or in connection with this deed to ensure that their respective firewall and/or mail server (as applicable) allows messages of up to 20 MB.

6. Confidentiality

6.1 General obligations

The parties must keep confidential and not allow, make or cause any public announcement or other disclosure of or in relation to:

- (a) the terms of this deed (including any written or oral agreements, negotiations or information in relation to this deed) and the Oxford Comfort Letter; and
- (b) any documents which are, or information which is, confidential under this deed,

without the prior written consent of the other parties, which consent may be given or withheld, or given with conditions, in the other parties' sole discretion.

6.2 Exceptions

The parties' obligations in clause 6.1 do not apply to a disclosure or announcement to the extent that the disclosure or announcement is:

- (a) required by Law;
- (b) required by the listing rules of Australian Stock Exchange Limited;
- (c) necessary for each of the parties to perform its obligations under this deed;
- (d) made by a party to the Investors, shareholders, financiers, professional advisers, but only to the extent that those parties need to know that information to perform a party's obligations under this deed;
- (e) made by INSW to the State of NSW or any entity or department of the State of NSW;
- (f) where required by government directive applying to INSW.

6.3 Procure compliance

The parties must procure any sub-contractors, financiers and their respective employees, agents, contractors and advisers to:

- (a) comply with the obligations set out in this clause; and

- (b) where relevant, ensure that all contracts or documents to which any one or more of them is a party contain a provision which acknowledges the obligations created by this deed.

6.4 Disclosure by INSW

The parties acknowledge and agree that:

- (a) INSW may make this deed available to the Auditor-General:
- (i) in accordance with and to the extent required by the Public Finance and Audit Act 1983 (NSW); and
 - (ii) so far as possible, on a commercial-in-confidence basis;
- (b) subject to the parties' rights at Law, INSW may publish information concerning this deed in accordance with:
- (i) the NSW Government's Code of Practice for the Building and Construction Industry; and
 - (ii) the NSW Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry; and
- (c) under the GIPA Act, INSW has obligations to:
- (i) publicly disclose government information that is open access information (as that term is defined in the GIPA Act), including by publishing the Project Documents on INSW's contract registers; and
 - (ii) release information pursuant to an access application unless INSW is reasonably satisfied that there is an overriding public interest against disclosure.
 - (iii) sensitive information.

7. General

7.1 Waiver

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

7.2 Rights cumulative

The rights and remedies provided in this deed are cumulative and do not exclude any rights or remedies provided by Law.

7.3 Entire agreement

This deed and the Oxford Comfort Letter form the entire agreement of the parties on the subject matter of the Oxford Comfort Letter. The only enforceable obligations and liabilities of the parties in relation to the Oxford Comfort Letter are those that arise out of the provisions contained in this deed. All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

7.4 Amendment

This deed may only be amended or supplemented in writing signed by the parties.

7.5 Severability

Any provision in this deed which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this deed or affecting the validity or enforceability of that provision in any other jurisdiction.

7.6 Further assurance

Each party must do, sign, execute and deliver and must procure that each of its employees and agents does, signs, executes and delivers, all deeds, documents, instruments and acts as reasonably required of it or them and must carry out and give full effect to this deed and the rights and obligations of the parties under it.

7.7 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute the same instrument.

7.8 Attorneys

Each attorney who executes this deed on behalf of a party declares that the attorney has no notice of the revocation or suspension by the grantor or in any manner of the power of attorney under the authority of which the attorney executes this deed.

7.9 No partnership or agency

Except as expressly provided in this deed nothing contained or implied in this deed will:

- (a) constitute or be deemed to constitute a party to be the partner, agent or legal representative of any other party for any purpose whatsoever or create or be deemed to create any partnership; or
- (b) create or be deemed to create any agency or trust.

7.10 Non-merger

No provision of this deed:

- (a) merges on or by virtue of any act, matter or thing undertaken or carried out by party; or
- (b) is in any way modified, discharged or prejudiced by reason of any investigations made or any information acquired by or on behalf of a party being waived.

7.11 Law and jurisdiction

- (a) This deed is governed by the Law of the State of New South Wales.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and any courts that may hear appeals from those courts in respect of any proceedings in connection with this deed.

7.12 No fettering of Statutory Power

Nothing in this deed will operate so as to fetter or in any way impede the exercise of the statutory powers, functions and discretion of INSW in its role as a government agency under the Infrastructure NSW Act 2011 (NSW), pursuant to the Barangaroo Delivery Authority Act 2009 (NSW) or its role as roads authority under the Roads Act 1993 (NSW).



Executed as a deed.

Executed for and on behalf of **Infrastructure NSW** by its authorised officer in the presence of:

Signature of witness

Signature of authorised officer

Full name of witness

Full name of authorised officer

Executed by **Hines (Aus) Investment Services Pty Ltd ACN 169 230 335 as trustee for OPG Central Barangaroo 5 Trust** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

Signature of director

Signature of director/secretary

Name

Name

Executed by **Hines (Aus) Investment Services Pty Ltd ACN 169 230 335 as trustee for OPG Central Barangaroo 6 Trust** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

Signature of director

Signature of director/secretary

Name

Name

CLAYTON UTZ

Executed by **Oxford Australia Office Finance Pty Ltd ACN 628 043 498** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

Signature of director

Name of director (block letters)

Executed by **Oxford Properties Management Australia Pty Limited 627 186 092** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

Signature of director

Name

Signature of director/company secretary*
*delete whichever is not applicable

Name of director/company secretary* (block letters)
*delete whichever is not applicable

Signature of director/secretary

Name



Signed Sealed and Delivered for Aqualand B Development Holding Pty Ltd by its attorney under power of attorney dated 1 June 2016 in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name

Signed Sealed and Delivered for Aqualand Development 2 Pty Limited by its attorney under power of attorney dated 25 February 2016 in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name

Signed Sealed and Delivered for Aqualand Development 5 Pty Limited by its attorney under power of attorney dated 7 October 2016 in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name



Signed Sealed and Delivered for Aqualand Management Services Pty Ltd as trustee of the Aqualand Trust by its attorney under power of attorney dated 25 February 2016 in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name



Private & Confidential

29 August 2019

The Company Secretary
Aqualand B Development Holding Pty Ltd
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By email:

The Company Secretary
Aqualand Management Services Pty Ltd
as trustee of the Aqualand Trust
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By email:

Yi Lin
Shanghai Shenglong Investment Group
Limited Company
37th Floor Taiping Financial Tower
No. 488 Yincheng Zhonglu
Pudong New District
SHANGHAI

By email:

The Company Secretary
Aqualand Development 2 Pty Limited
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By email:

The Company Secretary
Aqualand Development 5 Pty Limited
Tower 1, Level 47, 100 Barangaroo Avenue
BARANGAROO NSW 2000

By email:

The **Office Investors** (as defined in the MUPID)
from time to time

Dear Sirs

Confirmation regarding Material Default under the MUPID and CENDA following Step-in

Background

We refer to:

1. the Central Barangaroo Development Agreement as amended by the First Deed of Amendment to Central Barangaroo Development Agreement dated 15 November 2017 (**CENDA**) between Barangaroo Delivery Authority (**Authority**), Grocon (CB) Developments Pty Limited (**Developer**), Grocon Constructors Pty Ltd (**General Guarantor**) and Grocon Group Holdings Pty Limited (**Office Guarantor**);
2. the Multi-party Investor Side Deed – Central Barangaroo as amended by the First Deed of Amendment and Accession to Multi-party Investor Side Deed – Central Barangaroo dated

15 November 2017 (**MUPID**) between the Authority, Developer, General Guarantor, Office Guarantor, Aqualand B Development Holding Pty Ltd (**Aqualand**), Aqualand Management Services Pty Ltd, Aqualand Development 2 Pty Limited, Aqualand Development 5 Pty Limited, WSF Fund Pty Limited, RE1 Limited, Scentre Design and Construction Pty Limited (**Retail Step-in Party**), Scentre Group Limited (**Retail Step-in Party Guarantor**) and others; and

3. the dissolution of the Authority and the transfer of all assets, rights and liabilities to Infrastructure NSW (**INSW**) as and from 1 July 2019.

Capitalised words in this letter have the meaning given to them in the CENDA and the MUPID unless stated otherwise in this letter.

The acknowledgements, agreements and other matters set out in paragraph B below are subject to and conditional on delivery of the Signed Deed of Release to INSW or its solicitors on or before 30 September 2019 (or such later date as is notified by INSW in writing), where:

- **Deed of Release** means the document titled "Deed of Release – Oxford Comfort Letter" in the same form as contained in Annexure A to this Letter;
- **Effective Date** means the date of delivery of the Signed Deed of Release to INSW or its solicitors, Clayton Utz (Level 15, 1 Bligh Street, Sydney NSW 2000, Attention: Julie Levis & Anne Taylor); and
- **Signed Deed of Release** means the Deed of Release duly executed (in counterpart) by all of the entities who are a party to the Deed of Release other than INSW.

Acknowledgments and Agreements

A. **Step-In**

INSW notes that, following a step-in by a Step-in Party under the MUPID:

- (a) the relevant Step-in Party will be entitled to each of the rights, and must observe all of the obligations, of the Developer under the CENDA; and
- (b) under the CENDA:
 - (i) INSW may issue a notice to a Step-in Party (as the Developer) under clause 49.5 of the CENDA if a Default Event has occurred before Project Practical Completion;
 - (ii) a Default Event includes a Material Default; and
 - (iii) a Material Default under the CENDA includes the occurrence of an Insolvency Event in relation to the General Guarantor or Office Guarantor (being Grocon entities), and this position continues despite a Step-In Party (which is not a Grocon entity) having become the Developer.

B. **Confirmation**

While the CENDA does not specifically exclude the occurrence of an Insolvency Event of the General Guarantor or Office Guarantor as a Default Event or a Material Default after step-in by a Step-in Party, it is not the intention for the occurrence of an Insolvency Event of the General Guarantor or Office Guarantor following step-in by a Step-in Party to permit the development rights under the CENDA to be taken from the relevant Step-in Party.

Accordingly, with effect from the Effective Date, INSW acknowledges and agrees for the benefit of each Step-In Party that after a step-in by the relevant Step-in Party under the MUPID, INSW will not rely on, enforce or otherwise exercise any rights against the relevant Step-In Party in relation to:

- (a) the occurrence of any Insolvency Event in relation to; or
- (b) any other Material Default of,

the General Guarantor or Office Guarantor, including the issuing of a Material Default Notice to the Step-In Party. Nothing in this letter limits the enforcement or exercise of any rights by INSW against the General Guarantor or Office Guarantor.

C. Reliance

INSW acknowledges each Step-in Party will rely on this confirmation in relation to the Central Barangaroo development.

Yours sincerely

Simon Draper
Chief Executive Officer

The Chief Executive Officer of INSW executes this letter in the name of, and on behalf of, Infrastructure NSW.

Annexure A

Deed of Release – Oxford Comfort Letter