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**DRAFT VOLUNTARY PLANNING
AGREEMENT**

1 ALFRED STREET, SYDNEY

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Explanatory Note Pursuant to Regulation 25E of the Environmental Planning and Assessment Amendment (Development Contributions) Regulation 2005

1 Alfred Street, Sydney

Development Application No D/2010/2029 for demolition of existing building and construction of two new mixed use buildings of 55 storeys and 15 storeys including residential apartments, future business and/or retail premises, basement parking, and provision for recreation areas, lanes and streets at 1 Alfred Street, Sydney (Site).

(1) Background

Urban Design Study

In September 2008, the City of Sydney commissioned the NSW Government Architect's Office to prepare an urban design study (the study) for the block bound by Alfred, Pitt, Dalley and George Streets in central Sydney (the APDG Block). The key purpose of the study was to ensure that Council has a consistent set of planning controls that promote high quality built form and urban design outcomes for both the public and private domain on this important street block.

The study recommended an option for the APDG Block consisting of a large central publicly accessible square, a connected and activated laneway network, and three tower buildings. The key principles driving this recommendation was that additional height would be considered in exchange for significant and quantifiable public domain improvements, and that this would unlock latent capacity within the APDG Block without compromising amenity factors that attract investment and promote job growth in the City.

The outcome of the study was the recommendation that the APDG site specific controls would operate as an alternative to existing controls in *Sydney Local Environmental Plan 2005*, that is, additional height will be allowed only if owners choose to participate.

The study identified strategic groupings of sites located within the APDG Block, and proposed controls to enable these sites to develop in a "Development Block" pattern, where additional height will be offered in exchange for public domain improvements. Three Development Blocks were identified, with the subject site being identified as "Development Block 3".

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Amendments to Sydney LEP 1995 and Central Sydney DCP 1996

In March 2010, the Council and the Central Sydney Planning Committee (CSPC) endorsed reports recommending the public exhibition of *Draft Sydney Local Environmental Plan 2005 (Amendment No. 2)* and *Draft Central Sydney Development Control Plan 1996 (Amendment No. 20)*, collectively referred to in this explanatory note as the “alternative scheme”.

The alternative scheme incorporated the recommendations of the study and also included controls that reflect the building envelope of the winning entry of the December 2009 architectural design competition held for 1 Alfred Street, (Goldfields House) the north-most site within the APDG Block.

The alternative scheme was publicly exhibited for a period of 28 days from 28 July 2010 to 24 August 2010. Twenty eight submissions were received, primarily from owners of sites within the APDG Block, owner/occupants of nearby residential apartments and owners of commercial buildings within the vicinity of the block. The key issues raised included requests for additional development incentives to stimulate development in accordance with the alternative scheme, objections about view impacts to nearby residential and commercial tower buildings and concerns regarding the potential impacts on the character of Circular Quay.

The key outcome arising from the review of submissions was to amend the alternative scheme to permit more of the current floor space allocation available to the Westpac owned site on the northern portion of Development Block 1 to be transferred to the proposed tower envelope on the southern portion of Development Block 1, to the point where no building would be required on the Westpac site. This would facilitate an increase in the area of the proposed central publicly accessible square from approximately 1,200 square metres up to approximately 2,600 square metres. The effect of this larger square would be a significant public benefit above that originally envisioned for the APDG Block. The proposed change to the exhibited alternative scheme did not constitute an increase in the floor space currently allowed by *Sydney Local Environmental Plan 2005* but it simply allowed a reallocation of existing permissible floor space and required only a minor technical amendment to the exhibited *Draft Central Sydney Development Control Plan 1996 (Amendment No. 20)* in order to be implemented.

In November 2010, following consideration of the submissions, the Council and the CSPC resolved to approve the draft LEP for the purposes of requesting the Minister for Planning to make the LEP. At the same time, the Council and the CSPC adopted the draft DCP with it to come into effect upon gazettal of the LEP.

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On 29 April 2011 **Sydney Local Environmental Plan 2005 (Amendment No 2)** was gazetted. This LEP amended *Sydney Local Environmental Plan 2005* by inserting a new clause 52A including a new plan as part of the Central Sydney Site Identification Plan forming part of *Sydney Local Environmental Plan 2005* and amending the Dictionary to *Sydney Local Environmental Plan 2005* to refer to this plan. **Central Sydney Development Control Plan 1996 (Amendment No. 20)**, which provides for detailed building envelope controls for the APDG Block also came into effect on the same day. The amended DCP controls only apply to development applications that are subject to the provisions of new clause 52A of *Sydney Local Environmental Plan 2005*.

Subject Development Application

On 2 December 2010, Development Application D/2010/2029 was lodged by the developer of the Site and seeks approval for the following:

- demolition of the existing building on the Site;
- construction on the Site of new mixed use development, comprising two buildings of 55 storeys and 15 storeys that accommodates 197 residential apartments and 924sqm of business and retail floor space;
- 8 levels of basement car parking accommodating 307 car parking spaces, 41 motorcycle spaces, 67 bicycle spaces and 4 service/delivery bays; and
- public domain improvement works that contribute to the provision for recreation areas, lanes and streets.

This Application relies upon the alternative scheme (the APDG planning controls). The owner of the subject land has offered to enter into a voluntary Planning Agreement with Council to provide for publicly accessible recreation areas, lanes and streets and enhance the public domain.

(2) The Objectives, Nature and Effect of the Proposed Agreement

The objective of the Planning Agreement is to secure publicly accessible open space, streets, lanes and other links through the site in connection with the Development Application in accordance with the provisions of Clause 52A of the *Sydney Local Environmental Plan 2005*.

A further objective of the Planning Agreement is to provide for public domain improvement works that will upgrade and enhance the surrounding public domain, and positively contribute to the locality in accordance with the provisions of Clause 10(1)(d) of the *Sydney Local Environmental Plan 2005*.

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The nature of the Planning Agreement is to require the landowner of the Site to provide the following public benefits in accordance with Clauses 10 and 52 A(4)(a) of the *Sydney Local Environmental Plan 2005*:

- (a) **To provide for recreation areas** – to create an extension of Herald Square by encompassing the forecourt of the new buildings (beneath the canopy) as publicly accessible open space and an easement to this effect to be registered on the titles of the Site.
- (b) **To provide for streets** - the dedication of strips of land to Council that are located outside the blade walls of the proposed buildings' canopy to allow for an extension of the existing road reserve of George Street, Pitt Street and Herald Square; and
- (c) **To provide for lanes** – to contribute to the public domain by providing a north-south through-site link connecting Herald Square to the future laneway and publicly accessible square within the APDG block. This through-site link is to be registered on the titles of the Site as an easement for right of public access with an associated public positive covenant to allow pedestrian access 24 hours per day, 7 days a week. Business and retail premises are to be provided at ground level along the frontage of this through-site link.
- (d) **To contribute positively to the public domain** – a piece or pieces of public art to the value of \$1.5 million are to be commissioned by the developer to positively enhance the treatment of the public domain. The exact location of this public art shall be determined through consultation with Council, however, it is envisaged it is likely to be generally located within the through-site link or the adjacent publicly accessible recreation area (identified as FR3 on the accompanying plans).

Further to the above public benefits proposed in accordance with the objectives of Clause 52A(1) of the *Sydney Local Environmental Plan 2005*, the planning agreement requires the landowner of the Site to provide a shared vehicular driveway from Pitt Street, as well as a breakthrough panel within the basement car park. These works would facilitate an integrated vehicular connection between the Site and its immediate neighbours at 19-31 Pitt Street (Fairfax House) (in the event that Fairfax House is redeveloped and vehicular access is to be provided to the redeveloped Fairfax House site via the Site) and 31A Pitt Street (the Rugby Club). A right of carriageway will be created over the vehicular access ramp to the Site to facilitate this connection and will be registered on the titles to the Site.

Provision of a shared access and integrated basement will eliminate the existing servicing and vehicular access from the rear lanes, enabling activation of this laneway network consistent with the objectives of Sections G4.3 and G5.3.2 of the *Central Sydney Development Control Plan 1996 (Amendment No. 20)*.

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(3) Assessment of the Merits of the Proposed Planning Agreement including the impact (positive or negative) on the public or any relevant section of the public

The scope of the Planning Agreement will benefit the public and the local community and provide and improve the public domain forming part of the Site by providing for recreation areas, lanes and streets within the APDG block and the provision of public art in accordance with Clauses 10 and 52A *Sydney Local Environmental Plan 2005 (Amendment No 2)* and the applicable provisions in Section 2.12G of *Central Sydney Development Control Plan 1996 (Amendment No. 20)*.

(4) Identification as to How the Planning Agreement Promotes the Public Interest and One or More of the Objects of the Act

The Planning Agreement promotes the objects of the Environmental Planning and Assessment Act by providing land for public purposes. (section 5(iv)).

The Planning Agreement promotes the public interest by requiring the Developer to develop and improve the public domain, as well as facilitating unrestricted public access to these recreation areas, lanes and streets in accordance with the provisions of Clause 52A of the *Sydney Local Environmental Plan 2005*.

(5) Council Charter under S 8 of the Local Government Act 1993

The Planning Agreement promotes the following elements of the Council's charter under s 8 of the Local Government Act 1993:

- to provide directly, appropriate services and facilities for the community and ensures that these facilities are managed efficiently and effectively; and
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible.

(6) Identification of the Planning Purpose Served by the Agreement

This Planning Agreement ensures that Council is implementing the site specific planning provisions in Clause 52A of *Sydney Local Environmental Plan 2005* that will facilitate the redevelopment of this important Site and street block in accordance with the vision to achieve a high quality urban form and public domain and will facilitate a major public benefit in terms of an extension of the existing road reserve of George Street, Pitt Street and Herald Square, an expansion to Herald Square to contribute to the Circular Quay context of the Site and an activated laneway network to link the Site with the future publicly accessible square.

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(7) Assessment of Whether the Planning Agreement Provides a Reasonable Means of Achieving that Purpose

The Planning Agreement is a reasonable means of achieving the planning purpose referred to in (6) above as it secures the land owner's commitment to contribute the public benefits before the development the subject of the development application is able to be carried out. The Planning Agreement creates an enforceable contractual obligation on the landowner and its successors in title to provide the public benefits the subject of the Planning Agreement as the Planning Agreement provides for the landowner to give guarantees for the delivery of the public benefits to the Council and will be registered on the titles of the Site.

(8) Identification as to whether the Agreement Conforms with Council's Capital Works Program (if any)

The proposal has no direct impact on any item contained within Council's Capital Works Program.

(9) Requirements of the Agreement pursuant to Clause 25 (E) (2) (g) of the Environmental Planning and Assessment Regulations 2000

The following requirements of the Planning Agreement must be complied with:

- a) Before a construction certificate is issued for various parts of the development:

Provision of bank guarantees to the Council to secure the registration of the right of carriageway and the carrying out of public domain works and public art work (to roads, through site link, and public footway and recreation areas) (clause 11.1 and Item 9 of Schedule 1).

- b) Before an occupation certificate is issued for various parts of the development:

Dedication of land for roads, registration of easements on title for through site link and public footway and recreation areas, registration of right of carriageway and completion of public domain works (to roads, through site link and public footway and recreation areas, and installation of public art) (clause 6 and Schedule 2; clause 9.7 and Schedule 3) and removal of the breakthrough panel to allow use of right of carriageway to adjoining land (clause 3.2 of Schedule 7).

- c) A subdivision certificate is issued: none

Note:

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- This explanatory note is not to be used to assist in construing the Planning Agreement.
- This explanatory note has been prepared jointly with the other parties proposing to enter into the Planning Agreement.

Dated 22 March 2012

PLANNING AGREEMENT

1 ALFRED STREET CIRCULAR QUAY SYDNEY

BETWEEN

THE COUNCIL OF THE CITY OF SYDNEY

AND

**VALAD COMMERCIAL MANAGEMENT LIMITED
(ACN 101 802 046)**

The Council of the City of Sydney
Legal Services - Level 11, Town Hall House
456 Kent Street
SYDNEY NSW 2000

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PLANNING AGREEMENT

THIS AGREEMENT IS MADE THE DAY OF 2012

PARTIES

1. **THE COUNCIL OF THE CITY OF SYDNEY** of 456 Kent Street, Sydney, New South Wales (**Council**); and
2. **VALAD COMMERCIAL MANAGEMENT LIMITED (ACN 101 802 046)** whose registered office is situate at Level 9, 1 Chifley Square, Sydney New South Wales (**the Developer**)

BACKGROUND

- A. The Developer is the owner of the Land.
- B. On **2 December 2010** the Developer authorised the Development Application to be lodged with the Council to carry out the Development on the Land.

OPERATIVE PROVISIONS

1 PLANNING AGREEMENT UNDER THE ACT

The parties agree that this Agreement is a Planning Agreement governed by subdivision 2 of Division 6 of Part 4 of the Act.

2 SCOPE AND APPLICATION OF THIS AGREEMENT

This Agreement binds the parties and applies to the Land on which the Development is to be carried out by the Developer. This Agreement **does not** include mechanisms for the payment of, and **does not** in any way reduce, offset or negate the Developer’s obligations to pay monies under:

- (a) s. 94 of the Act;
- (b) s. 61 of the City of Sydney Act;
- (c) Affordable Housing Levy;
- (d) any other statute or instrument that may apply to the land or to the Development Application.

For the purposes of section 93F(5) of the Act, the parties expressly agree that this Planning Agreement does not exclude the operation of section 94 of the Act, and conditions may be imposed in respect of the contributions identified in (a) to (d) (inclusive).

3 OPERATION OF THIS AGREEMENT

This Agreement takes effect on execution of this Agreement

4 DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Agreement the following definitions apply:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.

Adjoining Land means Lot I in DP 537286 and known as 19-31 Pitt Street, Sydney.

Barrier Fence means the fence shown marked as Removable Barrier Fence on the Plan.

Building A means the proposed building to be constructed on the Land adjacent to the western boundary of the Land as part of the Development and identified as Building A on the Plan and the plans lodged with the Development Application.

Building B means the proposed building to be constructed on the Land adjacent to the eastern boundary of the Land as part of the Development and marked Building B on the Plan and the plans lodged with the Development Application.

Carriageway means the carriageway limited in height and depth as delineated on the Plan to be constructed on the Carriageway Land generally in accordance with the Plan, so as to enable below ground vehicular access to be provided over the Land from Pitt Street to the Adjoining Land at the Breakthrough Panel shown on the Plan.

Carriageway Land means that part of the Land shown marked as C1 on the Plan.

Carriageway Works mean the construction of the Carriageway and temporary block work breakthrough panel wall to provide a future access opening to the Adjoining Land shown on the Plan.

City of Sydney Act means the *City of Sydney Act 1988* (NSW) as amended.

Claim means all third party claims, actions, demands, proceedings, judgments and damages.

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Completion means the stage in the construction of the Developer's Works when, in the reasonable discretion of the Council's Representative and notified under clause 9.5, the Developer's Works are complete except for minor omissions and minor defects which are non-essential and:

- (a) which do not prevent the Developer's Works from being reasonably capable of being used for their intended purposes;
- (b) which the Council determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the Developer's Works.

Construction Certificate has the same meaning as in the Act.

Construction Costs means the construction cost of the Developers Works, as determined by the Council in accordance with clause 7.5.

Conveyancing Act means the *Conveyancing Act 1919* (NSW).

Council's Representative means the person specified in Item 2 of Schedule 1 who is duly authorised to give approval under this Agreement or such other person as notified by the Council.

CPI means the All Groups Consumer Price Index for NSW as published by the Australian Bureau of Statistics

CSPC means the Central Sydney Planning Committee constituted under the City of Sydney Act and which has the functions conferred or imposed on it by that Act

Dealing means selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Dedicated Land means the Land for Roads specified in Item 6 of Schedule 1 to be dedicated to the Council free of cost in accordance with this Agreement.

Defects Liability Period means the period of 12 months from the date on which the Developer's Works reach Completion.

Development means the proposal of the general nature set out in Item 4 of Schedule 1 the subject of the Development Consent.

Development Application means the development application identified in Item 4 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended or

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supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted to the Development identified in Item 4 of Schedule 1 and includes all modifications made under section 96 of the Act to that consent.

Developer's Art Work means that part of the Developer's Works which is identified in Part E of Schedule 3 and refined and developed in accordance with this Agreement.

Developer's Contribution means the sum of the Monetary Contribution, Dedicated Land or other Public Benefits and any combination of a Monetary Contribution, Dedicated Land or any other Public Benefits identified in this Agreement.

Developer's Works means the works identified in Schedule 3, as refined and developed in accordance with this Agreement.

Easement Instruments means

- (i) the Proposed Instrument - Right of Carriageway;
- (ii) the Proposed Instrument - Right of Footway and Recreation;
- and
- (iii), the Proposed Instrument - Right of Public Access.

Encumbered Land means the land specified in Item 7 of Schedule 1 affected by the Easement Instruments.

Financier means any chargee and/or financier of the Developer in relation to the Development, who holds a mortgage over any part of the Land.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Guarantee means an unconditional bank guarantee, unlimited in time, issued by a bank licensed to carry on business in Australia that:

- (a) is in favour of the Council;
- (b) for the Guarantee Amount; and
- (c) on such other terms and conditions the Council may approve from time to time.

Guarantee Amount means the amounts specified in Item 9 of Schedule 1 as varied from time to time in accordance with this Agreement.

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Just Terms Act means the Land Acquisition (Just Terms) Compensation Act 1991(NSW) (as amended).

Land means the land identified in Item 3 of Schedule 1, comprising the land the subject of the Development Application.

Land for Public Footway and Recreation means:

- (i) North East Area (Building B);
- (ii) North West Area (Building A); and
- (iii) West Area (Building B).

Lands for Roads means:

- (i) North East Road Area (Building B), and
- (ii) North West Road Area (Building A)
- (iii) North Road Areas to the north respectively of Building A and Building B adjoining Alfred Street.

Law means any constitution or provision, statute, act regulation rule ordinance, proclamation, subordinate legislation, delegated legislation, by-law, judgment rule of common law or equity, rule approval consent or condition of approval or consent imposed by a competent entity exercising statutory jurisdiction in the relevant matter.

Month means a calendar month.

North East Area (Building B) means the part of the Land shown marked as FR2 on the Plan and limited in height and depth as delineated on the Plan.

North East Road Area (Building B) means the part of the Land shown marked as B2 on the Plan and limited in depth as delineated on the Plan.

North Road Areas means the parts of the Land shown marked as A2 and B1 on the Plan and limited in depth as delineated on the Plan.

North West Area (Building A) means the part of the Land shown marked as FR1 on the Plan and limited in height and depth as delineated on the plan.

North West Road Area (Building A) means the part of the Land shown marked as A1 on the Plan and limited in depth as delineated on the Plan

Occupation Certificate has the same meaning as in the Act.

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Party means a party to this agreement, and includes their successors and assigns.

Plan means the plan of proposed subdivision of Lot DP 220830 and Lot 1 DP 217877 dated 19 March 2012 (Issue 8) prepared by Mark Andrew (Surveyor) in Schedule 8.

Principal Certifying Authority means the principal certifying authority appointed under section 109E of the Act for the Development.

Proposed Instrument - Right of Carriageway means the proposed instrument and terms of easement to be created over the Carriageway under section 88B of the Conveyancing Act and set out in Schedule 7 or as amended with the consent of both Parties.

Proposed Instrument - Right of Public Access means the proposed section 88B instrument and terms of the easement to be created over the Through Site Link under section 88B of the Conveyancing Act and set out in Schedule 5 or as amended with the consent of both Parties.

Proposed Instrument - Right of Footway and Recreation means the proposed section 88B instrument and terms of the easement to be created over the Land for Public Footway and Recreation under section 88B of the Conveyancing Act and set out in Schedule 6 or as amended with the consent of both Parties.

Public Benefits means the public benefits identified in Item 8 of Schedule 1 which are to be provided as a result of the Developer's Works.

Public Space Instruments means:

- (i) the Proposed Instrument - Right of Footway and Recreation;
- and
- (ii) the Proposed Instrument - Right of Public Access.

Quantity Surveyor means a duly qualified quantity surveyor of at least five (5) year's experience in the assessment of building material and construction costs.

Relevant Legal Challenge means proceedings in a Court in which a declaration is sought that the Development Consent and/or this Agreement is invalid and includes but is not limited to any proceedings in which such a declaration is sought which are heard on remitter from another Court following an appeal

Suspension Expiry Date means the date on which the Suspension Period ends

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Suspension Period means the period of time from and including the date on which a document initiating a Relevant Legal Challenge has been served on either or both the Council and the Developer and ending on:

- (a) subject to paragraphs (b) and (c), the date on which:
 - (i) the Relevant Legal Challenge is discontinued;
 - (ii) final orders (apart from any orders as to costs) are made in the Relevant Legal Challenge; or
 - (iii) for any other reason, the Relevant Legal Challenge no longer includes an application for a declaration that the Development Consent or/and this Agreement is invalid;

whichever is the earlier;

- (b) subject to paragraph (c), if an Appeal Notice is filed and served in connection with final orders in the Relevant Legal Challenge or an Appeal from the Relevant Legal Challenge (apart from any orders as to costs), the date on which:
 - (i) the Appeal is discontinued;
 - (ii) for any other reason, the Appeal no longer includes an appeal in respect of a Court decision regarding the validity of the Development Consent and /or this Agreement whichever is earlier,

unless the orders in the Appeal require the Relevant Legal Challenge to be remitted to another Court in relation to the validity of the Development Consent and /or this Agreement, in which case paragraph (a) re-applies; or

- (c) the date which is 15 Business Days after the date on which the period of time allowed for filing an Appeal Notice described in paragraph (b) has expired, if no valid Appeal Notice has been filed and served by that first-mentioned date

Through Site Link means the part of the Land shown marked TSL on the Plan and limited in height, depth and width as delineated on the Plan.

Transferred Lands means the whole or any part of the Dedicated Land transferred or dedicated by the Developer to the Council or compulsorily acquired by the Council under this Agreement by the Suspension Expiry Date .

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West Area (Building B) means the part of the Land shown marked as FR3 on the Plan and limited in height and depth as delineated on the plan.

4.2 Interpretation

In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement.
- (b) a reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney and concludes at 5pm on that day.
- (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
- (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
- (e) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (f) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular.
- (g) references to the word 'include' or 'including' are to be construed without limitation.
- (h) reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (i) Any schedules and attachments form part of this Agreement.
- (j) A word defined in the Act has the same meaning in this Agreement.

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5 DEVELOPER'S CAPACITY AND LIABILITY

5.1 The Developer enters into this Agreement in its capacity as trustee of the Valad Fields Trust or such other trust from time to time (Trust) and not in its personal capacity.

5.2 The liability of the Developer to Council under or arising out of or in connection with this Agreement is limited to and can only be enforced against the Developer to the extent to which it can be satisfied from the assets of the trust. This clause does not apply to the extent to which there is a reduction in the Developer's right of indemnification out of the assets of the trust due to fraud or wilful default by the Developer or its breach of duty, breach of trust or negligence. The Developer warrants to Council that it holds the benefit of a right of indemnification out of the assets of the trust to the extent provided for in the trust deed.

5.3 Council has no right to an indemnity from the members of the trust against any liability or obligations of the Developer to Council.

5.4 This clause applies despite any other provision of this Agreement and extends to all liabilities and obligations of the Developer to Council under this Agreement.

6 DEDICATED LAND AND GRANT OF EASEMENTS AND COVENANTS

6.1 a) The Developer must dedicate or transfer the Lands for Roads to Council by the dates or times specified in Item 3 of Schedule 2, free of any trusts, estates, interests, covenants and encumbrances (other than those specified in this Agreement) and at no cost to Council.

b) For the removal of doubt, the provisions of s91 of the Roads Act 1993 and s177 of the Conveyancing Act 1916 apply to the Dedicated Land. In addition, if the Council requires, the Developer must create an easement for support in favour of Council and burdening the Land below the Dedicated Land.

6.2 The Developer must create a right of public access over the Through Site Link on the terms generally in accordance with the Proposed Instrument - Right of Public Access by the dates or times specified in Item 1 of Schedule 2.

6.3 After the right of public access has been created by the Developer over the Through Site Link in accordance with clause 6.2 or compulsorily acquired by Council in accordance with clause 29 .1, Council may require the developer to remove the Barrier Fence in accordance with the terms of the Proposed Instrument -Right of Public Access.

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- 6.4** The Developer must create a right of footway and recreation over the Land for Public Footway and Recreation on the terms generally in accordance with the Proposed Instrument - Right of Footway and Recreation by the dates or times specified in Item 2 of Schedule 2
- 6.5** The Developer must create a right of carriageway over the Carriageway on terms generally in accordance with the Proposed Instrument - Right of Carriageway by the date or time specified in Item 4 of Schedule 2.
- 6.6** The Developer must procure that the Carriageway Works are completed in accordance with this Agreement and by the time set out for Item 5 in Schedule 2.
- 6.7** The Developer must comply with any directions by the Council in respect of the dedication of the Dedicated Land to the Council, and the registration of the Easement Instruments against the title to the Encumbered Land.

7 APPROVAL OF DEVELOPER'S WORKS

7.1 Definition of Scope of Works

The parties agree that the works described in Schedule 3 comprise the Developer's Works for the purposes of this Agreement. The parties acknowledge and agree that further design detail and refinement are/may be necessary, having regard to the following:

- (a) the extent to which the design of any part of the Developer's Works has been completed to the reasonable satisfaction of Council (in its capacity as a party to this Agreement and not as consent authority) at the date of execution of this Agreement;
- (b) conditions reasonably affecting the Developer's Works which were not reasonably capable of identification on or before the date of this Agreement;
- (c) the extent of any design refinement identified in Schedule 4;
- (d) to take into account a modification to the Development Consent made and approved under s.96 of the Act or any other development consent granted in respect of the Developer's Works; and
- (e) to accommodate the policies, procedures and standards identified in Schedules 3 or 4 in accordance with the reasonable requirements of the Council.

7.2 Developer to Prepare and Submit

The Developer must prepare the detailed description, including, design drawings, for the Developer's Works in accordance with the requirements set out in Schedules 3, 4 and 10, and submit it to Council's Representative for approval, such approval not to be unreasonably withheld:

(a) In relation to the Carriageway Works within one month of the date of issuance of the first Construction Certificate in relation to the Development or any part thereof below ground level;

(b) In relation to the Developer's Art Work, prior to the date of issuance of the first Construction Certificate in relation to the Development or any part thereof at or above ground level; such detailed description is to contain the proposed location of the Developer's Art Work which if such location is not agreed by Council shall be subject to the dispute resolution procedures in Clause 14 hereof.

(c) In relation to the balance of the Developer's Works, prior to the date of issuance of the first Construction Certificate in relation to the Development or any part thereof at or above ground level

or such later time as the Parties may agree,

7.3 Notice of Plans

The Council must promptly (and in any event within 40 days of submission) give the Developer notice whether or not the design drawings and description of the Developer's Works prepared under clause 7.2 are satisfactory. If the design or description are not satisfactory having regard to Schedules 3, 4 and 10, then the Council must identify the further information, or modifications, (as the case may be) which are required so that the Developer's Works comply with Schedules 3, 4 and 10. The Developer must promptly amend the proposed design to take into account the comments made by the Council under this clause.

7.4 If Developer Does not Prepare Plans for the Developer's Works

- (a) If the Developer:
- (i) does not prepare plans in accordance with clause 7.2; or
 - (ii) does not within 3 months of the issue of those comments under clause 7.3, amend the plans to take into account the comments made by Council so that the Developer's Works comply with Schedules 3, 4 and 10,

then the Council may make an appropriation from the Guarantee for the purposes of carrying out works of the kind

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contemplated by this Agreement and generally identified in Schedule 3.

(b) Before exercising the right conferred in clause 7.4(a) the Council must:

(i) give notice to the Developer to rectify the non-compliance with clauses 7.2, 7.3 and 7.4(a)(ii) within 10 Business Days of the non-compliance; and

(ii) allow the Developer to rectify the non-compliance with clauses 7.2, 7.3 and 7.4(a)(ii) within 20 Business Days of receipt of the notice referred to in clause 7.4(b)(i).

7.5 Valuation of Proposed Developer's Works

The Developer must, on or before the submission of plans under clause 7.2, prepare and submit a detailed costs estimate (certified by a Quantity Surveyor) for the estimated costs of the Developer's Works. The Council (acting reasonably) may:

(a) reject items included within that Quantity Surveyor's estimate which are not directly related to the Developer's Works;

(b) require substantiation for the costs of items where the amount estimated is considered by Council to be excessive in the circumstances;

(c) require an adjustment to the costs estimates to reflect a variation to the design required under this clause 7.

The parties expressly acknowledge and agree that the value of the works set out in Schedule 3 may be refined and adjusted having regard to the process of valuation set out in this clause. The Developer is not entitled to change or reduce the scope of the Developer's Work by reason only that the costs incurred are greater than estimated under this clause or greater than the amount originally identified in Schedule 3.

8 FINAL DESIGN OF THE DEVELOPER'S WORKS

8.1 Preparation of the Plans and Specifications

The Developer must complete construction drawings in accordance with the design developed and approved by Council under clause 7.

8.2 Approval or variation by the Council

The Council may by written notice to the Developer approve, vary or direct the Developer to vary the construction design drawings for the Developer's Works so as to reflect the documents or standards (as the case may be) set out in Schedules 3, 4 and 10 provided such direction

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does not unnecessarily or unreasonably alter the design intent or integrity of the Developer's Art Work.

8.3 Directions by the Council

The Developer must comply with any reasonable direction given by the Council under sub-clause 8.2 in respect of the design and implementation of the Developer's Works.

9 CONSTRUCTION OF DEVELOPER'S WORKS

9.1 Insurance

The Developer must:

- (a) maintain public liability insurance, with an insurer approved by the Council, with the Council identified as an interested party, for an amount not less than the amount stated in Item 10 of Schedule 1 covering all aspects of the Developer's Works and submit a copy of the certificate of insurance to the Council before the commencement of the construction of the Developer's Work;
- (b) maintain all other reasonably necessary and prudent insurance policies in respect of the Developer's Works including
 - (i) construction insurance in relation to the Developer's Works;
 - (ii) insurance against death or injury to persons employed or otherwise engaged in relation to the undertaking of the Developer's Works, and
 - (iii) any other insurances required at law; and
- (c) maintain the insurances in clauses 9.1(a) and 9.1(b) until the expiration of the Defects Liability Period.

9.2 Approvals and Consents

- (a) The Developer must (at its cost) obtain all relevant approvals and consents for the Developer's Works whether from the Council or any other relevant government agency, including any necessary road opening permit.
- (b) Before commencing the Developer's Works, the Developer must give to the Council copies of all approvals and consents for the Developer's Works.

9.3 Construction Work

The Developer must (at its cost):

- (a) carry out and complete the Developer's Works in accordance with the all approvals and consents relating to the Developer's Works (including the approval by Council of plans and any other information submitted under this Agreement); and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this Agreement so that they are structurally sound, fit for purpose, and suitable for their intended use; and
- (c) promptly advise the Council's Representative of any significant delays which it experiences in completing the Developer's Works; and
- (d) comply with any reasonable directions from the Council in respect of the construction of the Developer's Works.

The Developer expressly acknowledges and agrees that the estimated costs of the Developer's Work set out in Schedule 3 are estimates only. The Developer is not entitled to reduce the Developer's Works by reason only that the costs actually incurred are greater than those anticipated and set out in Schedule 3.

9.4 Inspection of Works

The Council as a party to this Agreement and not as an authority may (but is not obliged):

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's representative in good faith of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of such inspection.

The parties expressly agree that any failure to identify a defect, error and omission, will not be construed as amounting to an acceptance by the Council of that defect, error or omission.

9.5 Works Completion

When, in the opinion of the Developer, the Developer's Works have reached completion, the Developer must notify the Council's Representative in writing, and must include in that notice:

- (a) a statement from the person with direct responsibility carriage and supervision of that work that in their opinion the Developer's Works have reached completion; and

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- (b) copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Developer's Work; and
- (c) at least three (3) sets of the "as built" drawings of the Developer's Work, including one set in electronic format.

9.6 Final Inspection by Council

The Council's representative must inspect the Developer's Works within 14 days of notification under clause 9.5 and must by notice to the Developer either:

- (a) concur that Completion has been achieved; or
- (b) disagree that Completion has been achieved and (if the Council's representative so disagrees) identify the errors or omissions which have been identified and which in the opinion of the Council's representatives prevent Completion; or
- (c) issue a notice of the nature identified in clause 9.8

Nothing in this clause 9.6, or in any notice issued under this clause 9.6, will be construed to reduce or waive in any manner the Developer's responsibility to correct minor defects or minor omissions, whether or not these are identified by Council.

9.7 Date of Completion of Developer's Works

The Developer must ensure that the Developer's Works reach Completion on or before the dates or times specified for the particular item of the Developer's Works in Schedule 3.

9.8 Non-completion of Developer's Works

- (a) If the Developer so requests, the Council may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice in writing to the Developer, expressly stating that completion of the items identified in that notice is not required in fulfilment of this Agreement.
- (b) If the Council permits the Developer not to complete the Developer's Works (or any part of them), the Council may make an appropriation from the Guarantee in such amount as the Council considers necessary to complete the Developer's Works (or any part of them).
- (c) If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under the Development Consent or this Agreement, then Council in its discretion may either:

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- (i) complete the Developer's Works; or
- (ii) modify the Public Benefits to reasonably achieve the objectives identified in this Agreement or the Development Consent

and may recover all costs of and reasonably incidental to that work from the Developer. The Council may apply the monies secured from the Guarantee and (to the extent that expenditure exceeds the amount secured) recover any shortfall from the Developer as a debt due and owing.

9.9 Indemnity by the Developer

The Developer indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from any act or omission by the Developer (or any person engaged by it, including any contractor) in connection with the performance of the Developer's Works, except where the damage, expense, loss or liability suffered or incurred by the Council is caused by, or contributed to, by any wilful or negligent act or omission of the Council (or any person engaged by it, including any contractor)

9.10 Intellectual Property in Developer's Art Work

The Developer upon Completion assigns to the Council the whole of any intellectual property rights held by it in respect to the Developer's Art Work. The Council acknowledges that (on and from such assignment) the Council must ensure compliance with all relevant laws relating to moral rights in respect of the relocation or decommissioning (as the case may be) of the Developer's Art Work

9.11 Grant of such easements as are reasonably necessary

The Developer upon Completion of the Developer's Art Work shall grant to Council such easements as are reasonably necessary for Council to support, maintain, repair and access the Developer's Art Work.

10 DEFECTS LIABILITY PERIOD

10.1 Defects in the Developer's Works

If the Council notifies the Developer of a defect in the Developer's Works within the Defects Liability Period, then the Developer must remedy that defect to the reasonable satisfaction of the Council's Representative, within a reasonable period (having regard to the nature of the defect).

10.2 Security for Defects Liability Period

Until the expiration of the Defects Liability Period, the Council may retain from the Guarantee an amount equal to 10% of the Construction Costs as security for the performance by the Developer of its obligations under this clause 10.

10.3 Application of Security

If the Developer does not rectify any defect in the Developer's Works duly notified under clause 10.1 within the reasonable period specified in the notice or as otherwise agreed between the parties, then the Council may

- (a) rectify the defect in the Developer's Works;
- (b) may make an appropriation from the Guarantee retained in accordance with clause 10.2 for the costs of and arising from the rectification; and
- (c) (to the extent that the costs exceed the Guarantee held) may recover the costs from the Developer as a debt due and owing.

11 SECURITY

11.1 Provision of Security

- (a) The Developer must provide the Guarantee to the Council by the dates or times specified in Item 9 of Schedule 1.
- (b) The Developer hereby covenants that until such date as the relevant Guarantee has been provided, no works otherwise authorised by the Construction Certificate to which the relevant Guarantee relates as specified in Item 9 of Schedule 1 may commence.

11.2 Release of the Guarantee

- (a) The Developer may by notice to the Council, upon completion of any distinct stage of the construction of the Developer's Works, request a partial release of the Guarantee.
- (b) The Council may, by notice to the Developer, request that the Developer provide a Quantity Surveyor's assessment of the costs of the Developer's Works and the actual Construction Cost before considering any request made by the Developer under paragraph (a).
- (c) The Council may promptly, after receipt of any notice under paragraph (a) and assessment under paragraph (b):

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- (i) consent to a partial release of the Guarantee (and if consent is given, Council acting reasonably may identify the amount of that reduction); or
 - (ii) reject that request, and if the request is so rejected Council must give reasons.
- (d) If the Council consents to a partial release of the Guarantee under clause 11.2(c)(i), it must return to the Developer the amount of the reduction identified in clause 11.2(c)(i) within 20 Business Days of the making of its decision in clause 11.2(c)(i).

11.3 Rights and Remedies of the Council

- (a) The Developer expressly acknowledges and agrees that the Council may make an appropriation from the Guarantee in such amount as the Council (acting reasonably) thinks appropriate if:
 - (i) the Developer does not submit the construction design for the Developer's Works to the Council's Representative in accordance with clause 7.2, but only after clause 7.4(b) has been complied with by the Council;
 - (ii) the detailed designs for the Carriageway Works are not finalised between the Parties at the date of issue of a Construction Certificate in respect of the Development, or any part thereof, below ground level;
 - (iii) the detailed designs for the balance of the Developer's Works other than the Carriageway Works are not finalised between the Parties within 12 months of the date of issue of a Construction Certificate in respect of the Development, or any part thereof, at or above ground level;
 - (iv) the Developer's Works do not reach Completion within **60** months of the date of issue of the first Occupation Certificate in respect of the Development ; or
 - (v) the Council in exercising its powers under this Agreement incurs expense or liability.
- (b) The amount appropriated by the Council under paragraph (a) must be applied only towards:
 - (i) the costs and expenses incurred by the Council rectifying any default by the Developer under this Agreement; or
 - (ii) carrying out the Developer's Works; or

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(iii) carrying out any other works to achieve the Public Benefits as the Council considers appropriate.

11.4 Right to Claim Not Affected

The Developer acknowledges and agrees that:

- (a) the Council may claim, under the Guarantee without reference to the Developer; and
- b) the rights of the Council under this Agreement do not derogate from any other rights at law or in equity in relation to any default by the Developer.

11.5 Adjustment of Guarantee Amount

- (a) On each anniversary of the date of this Agreement ("adjustment date") the Guarantee Amount is adjusted to a revised amount derived by applying the following formula:

$$RGA = \frac{GA \times A}{B}$$

where:

RGA is the Revised Guarantee Amount applicable from the relevant adjustment date;

GA is the Guarantee Amount that is current on the relevant adjustment date;

A is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and published immediately before the relevant adjustment date;

B is the index number for the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and published immediately before the later of the date of this Agreement (in the case of the first adjustment of the guarantee) and, (in the case of subsequent adjustments), the immediately preceding adjustment date.

- (b) The Council may give the Developer written notice of the revised Guarantee Amount to apply from the relevant adjustment date. If the Council does not do so, then the existing Guarantee will be retained.
- (c) The Developer must give the Council a replacement or further Guarantee so that the Council holds Guarantees for an amount equal to the revised guarantee amount no later than 14 days after receipt of a notice given under paragraph (b).

11.6 Release of Undertaking

If upon the expiration of the Defects Liability Period:

- (a) the whole of the monies secured by the Guarantee have not been expended, and the monies accounted for in accordance with clause 11.2 and 11.3; and
- (b) the Council's Representative (acting reasonably) is satisfied that there are no actual or contingent liabilities of the Council arising as a result of the performance of any Developer's Works,

then the Council must return the Guarantee, or the remainder of the monies secured under that Guarantee (as the case may be), to the Developer or as the Developer directs within 20 Business Days of the expiration of the Defects Liability Period.

12 EXPENDITURE BY THE COUNCIL

12.1 Expenditure by the Council

If the Council carries out the Developer's Works under sub-clause 11.3, 9.8 or 7.4, then the Council:

- (a) is not required to expend more money than is secured by the Guarantee. The Council may in its discretion elect not to carry out items of Developer's Works to ensure that the Developer's Works can be achieved for an amount equal to, or less than, the amount secured by the Guarantee at that time; or
- (b) may expend more money than is secured by the Guarantee in order to deliver the Developer's Works.

12.2 Debt due and owing to the Council

If Council expends more money than is secured by the Guarantee in either carrying out or in rectifying the Developer's Works (whether that expenditure is incurred under sub-clause 12.1 or 10.3), then the amount in excess of the Guarantee will be deemed to be a debt immediately due and owing to the Council by the Developer.

13 REGISTRATION OF THIS AGREEMENT

13.1 Registration of this Agreement

The Developer must promptly:

- (a) obtain any necessary consents to the registration of this Agreement on the title to the Land;

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- (b) lodge the Agreement for registration with the Department of Lands;
- (c) produce to the Council within 90 days of execution of this Agreement details of lodgement of the Agreement with the Department of Lands; and
- (d) following registration of the Agreement, notify the Council of registration, enclosing a title search of the Land confirming the registration.

13.2 Caveat

- (a) Without limiting any other provision of this Agreement, until such time as the registration of this Agreement is completed, the Developer agrees that Council may place a caveat over the Land precluding any dealing which is inconsistent with this Agreement.
- (b) If the Council lodges a caveat in accordance with clause 13.2(a), then the Council must do all things reasonably required to ensure that the caveat does not prevent or delay the registration of this Agreement. Council must promptly do all things reasonably required to remove the caveat from the titles of the Land once this Agreement has been registered on the titles of the Land.

13.3 Consent of Financier

The Developer represents and warrants to the Council that it has obtained, and is in possession of a written consent from the Financier in which the Financier;

- (a) consents to:
 - (i) the Developer entering into and performing its obligations under this Agreement;
 - (ii) the lodgement by the Council of a caveat (in a form agreed by the Financier) notifying its interest in this Agreement in the relevant folio of the Register for the Land registered under the Real Property Act 1900 (NSW); and
- (b) agrees:
 - (i) that it will only exercise its rights under any mortgage, charge, lien, pledge, trust, power or title retention or deposit arrangement in relation to the Land subject to the rights of the Council under this Agreement; and

- (ii) promptly upon request, to lodge at the Land and Property Information the relevant certificates of title to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the register for the Land .

13.4 Removal of Agreement

After the whole of the Developer's Contribution has been completed or supplied (as the case may be), the Council must promptly execute any form and supply such other information as is reasonably required by the Developer to enable the removal of this Agreement from the titles to the Land

14 DISPUTE RESOLUTION

14.1 Reference to Dispute

If a dispute arises between the parties in relation to this Agreement, then either party may seek to resolve in accordance with this clause 14.

14.2 Notice of Dispute

The party wishing to commence dispute resolution processes must notify the other of:

- (a) the nature, or subject matter, of the dispute, including a summary of any efforts made to resolve the dispute than by way of this clause 14;
- (b) the intention to invoke this clause 14;
- (c) (if practicable) the outcomes which the notifying party wishes to achieve;
- (d) any material impact which the dispute has upon the completion of the Developer's Works (and in particular the completion of the remainder of the Development).

The contents of a notice issued under the clause 14.2 are deemed to be confidential. The party issuing the notice may (but is not obliged) to assert legal professional privilege in respect of the contents.

14.3 Principals of Parties to Meet

The principals of the parties (and in the case of the Council, the principal may include the person acting the role of General Manager as defined in the Local Government Act, or such person as is nominated by that officer in writing) must promptly (and in any event

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within 14 days of written notice) meet in good faith to attempt to resolve the notified dispute. The parties may, without limitation:

- (a) resolve the dispute during the course of that meeting;
- (b) agree that further material, expert opinion, or consideration is needed to effectively resolve the dispute (in which event the parties will in good faith agree to a timetable for resolution);
- (c) agree that the parties are unlikely to resolve the dispute and in good faith agree to a form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for the resolution of the relevant dispute.

14.4. Neither Party May Constrain

If:

- (a) at least one meeting has been held in accordance with clause 14.3; and
- (b) the parties have been unable to reach an outcome identified in 14.2(a) to (c); and
- (c) either of the parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 14.3;

then that party may, by 14 day's notice to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 14 does not of itself amount to a breach of this Agreement

15 NOTICES

15.1 Service of Notice

Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

- (a) delivered or posted to that Party at its address set out in Item 11 of Schedule 1; or
- (b) faxed to that Party at its fax number set out in Item 11 of Schedule 1.

15.2 Change of Address

If a Party gives the other Party 10 Business Days notice of a change of its address or fax number, any notice, consent, information, application

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or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

15.3 Time of Service of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

- (a) if it is delivered, when it is left at the relevant address.
- (b) if it is sent by post, 2 Business Days after it is posted.
- (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

15.4 Service After Hours, on Weekends and Holidays

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

16 APPROVALS AND CONSENT

Except as otherwise set out in this Agreement, a party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

17 ASSIGNMENT AND DEALINGS

17.1 Dealings with Land

- (a) Subject to clause 17.1(b) the Developer must not have any Dealing unless:
 - (i) the Developer first informs the proposed assignee, transferee, purchaser or other party of this Agreement and provides the proposed assignee, transferee, purchaser or other party with a copy of this Agreement; and
 - (ii) where the Dealing involves selling, transferring or assigning of the Land only, the Developer transfers the obligations of this Agreement to the assignee, transferee or purchaser. For the avoidance of doubt, the Developer is not required to transfer the obligations of this Agreement to any mortgagee or chargee. (b) If the Incoming Party is acquiring an interest in the Land as a purchaser of one or more lots in a strata scheme, (whether or not the plan has, at the date of exchange, been

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registered at Land and Property Information NSW), then the Developer may create that interest without requiring that party to enter into an agreement with the Council and the interest so created will not be in breach of this Agreement.

17.2 Substitution of Security

As soon as is practicable after the Developer has any Dealings and the Incoming Party executes an agreement in similar form to this Agreement and provides a Guarantee in terms acceptable to the Council in accordance with this Agreement, the Council must, if so directed by the Developer, promptly release and return the Guarantee held at that time to the Developer.

18 COSTS

18.1 Legal and Administrative Costs

The Developer must pay all reasonable legal and administrative costs and expenses of the Council in relation to:

- (a) the negotiation, preparation and execution of this Agreement;
- (b) the giving effect to this Agreement; and
- (c) any enforcement of the rights under this Agreement.

18.2 Stamp Duty

The Developer is liable for and must pay all stamp duty (including any fine or penalty except where it arises from default by any other party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

19 ENTIRE AGREEMENT

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

20 FURTHER ACTS

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

21 GOVERNING LAW AND JURISDICTION

This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

22 JOINT AND SEVERAL LIABILITY

Any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually.

23 NO FETTER

Nothing in this Agreement will be construed as limiting or fettering in any way the exercise by Council and the CSPC of any statutory discretion or duty.

24 REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that they have power to enter into this Agreement and that entry into this Agreement will not result in the breach of any law.

25 SEVERABILITY

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the remainder of this Agreement is not affected.

26 MODIFICATION

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the parties to this Agreement.

27 WAIVER

A waiver by either Party is only effective if it is given in writing, and that waiver will only relate to the particular obligation or breach (as the case may be) identified in that communication.

28 GST

28.1 In this clause terms used have the meaning given to them by the GST Law as defined in Section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (the "GST Act").

28.2 Subject to the remainder of this clause 28, if a party to this Agreement (the "Supplier") makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

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- 28.3** If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing (“reimbursable expense”) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- 28.4** If a party to this Agreement has the benefit of an indemnity for a cost, expense, loss or outgoing (“indemnified cost”) under this Agreement, the indemnity is for the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.
- 28.5** Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.
- 28.6** Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

29 ENFORCEMENT PROVISIONS

29.1 Through Site Link

(a) Subject to clause 29.1(b), if the Developer does not comply with clause 6.2 by agreement between the Parties, and without limiting any other remedies available to Council, Council may compulsorily acquire an easement in the terms of Proposed Easement - Right of Public Access over the whole or any part of the Through Site Link where the Proposed Easement - Right of Public access has not been created in compliance with clause 6.2, in accordance with the Just Terms Act for the amount of \$1.00.

(b) Before exercising the right conferred in clause 29.1(a), Council must:

- (I) give written notice to the Developer to rectify the non-compliance with clause 6.2 within 40 Business Days of receipt of the written notice; and
- (II) allow the Developer to rectify the non-compliance with clause 6.2 within 40 Business Days of receipt of the written notice referred to in clause 29.1 (b)(i).

(c) The Developer and Council agree that:

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- (i) this clause 29.1 is an agreement between Council and the Developer for the purposes of section 30 of the Just Terms Act; and
- (ii) in this clause 29.1, Council and the Developer have agreed on all relevant matters concerning the compulsory acquisition and compensation to be paid for the acquisition of the easement for the purposes of a right of public access over the Through Site Link.

29.2 Land for Public Access and Recreation

(a) Subject to clause 29.2 (b), if the Developer does not comply with clause 6.4, by agreement between the Parties, and without limiting any other remedies available to Council. Council may compulsorily acquire an easement in the terms of Proposed Easement - Right of Footway and Recreation over the whole or any part of the Land for Public Access and Recreation that has not been created in compliance with clause 6.4 in accordance with the Just Terms Act for the amount of \$1.00.

(b) Before exercising the right conferred in clause 29.2(a), Council must:

- (i) give written notice to the Developer to rectify the non-compliance with clause 6.4 within 40 Business Days of receipt of the written notice and
- (ii) allow the Developer to rectify the non-compliance with clause 6.4 within 40 Business Days of receipt of the written notice referred to in clause 29.2(b)(i).

(c) The Developer and Council agree that:

- (i) this clause 29.2 is an agreement between Council and the Developer for the purposes of section 30 of the Just Terms Act; and
- (ii) in this clause 29.2 Council and the Developer have agreed on all relevant matters concerning the compulsory acquisition and compensation to be paid for the acquisition of the easement for the purposes of a right of footway and recreation over the Land for Public Access and Recreation

29.3 Land for Roads

(a) Subject to clause 29.3(b), if the Developer does not comply with clause 6.1(a) by agreement between the Parties, and without limiting any other remedies available to Council, Council may compulsorily acquire the whole or any part of the Land for Roads that has not been

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dedicated or transferred in compliance with clause 6.1(a) in accordance with the Just Terms Act for the amount of \$1.00.

(b) Before exercising the right conferred in clause 29.3(a), Council must:

- (i) give written notice to the Developer to rectify the non-compliance with clause 6.1(a) within 40 Business Days of receipt of the written notice; and
- (ii) allow the Developer to rectify the non-compliance with clause 6.1(a) within 40 Business Days of receipt of the written notice referred to in clause 29.3(b)(i).

(c) The Developer and Council agree that:

- (i) this clause 29.3 is an agreement between Council and the Developer for the purposes of section 30 of the Just Terms Act and
- (ii) in this clause 29.3 Council and the Developer have agreed on all relevant matters concerning the compulsory acquisition and compensation to be paid for the acquisition of the Land for Roads.

30 OBLIGATIONS IF A RELEVANT LEGAL CHALLENGE

30.1 Obligations if a Relevant Legal Challenge

(a) Notwithstanding anything else in this Agreement, and subject to clause 30.1(b), the Council agrees that in the event that a Relevant Legal Challenge is commenced:

- (i) the Developer's obligation under this Agreement to transfer or dedicate the Land for Roads is suspended and the Council cannot require the Developer to transfer or dedicate the Land for Roads;
- (ii) the consent provided under this Agreement by the Developer to the compulsory acquisition of the Land for Roads is withdrawn, is of no effect and the Council cannot compulsorily acquire the Land for Roads pursuant to this Agreement;
- (iii) the Developer's obligation under this Agreement to enter into the Easement Instruments is suspended and the Council cannot require the Developer to enter into the Easement Instruments;
- (iv) the consent provided under this Agreement by the Developer to the compulsory acquisition of the Public Space Instruments is withdrawn, is of no effect and the

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Council cannot compulsorily acquire the Public Space Instruments.

- (b) Clause 30.1(a) will have effect only for the Suspension Period.
- (c) If, at the end of the Suspension Period, there is no effective Court declaration or order that the Development Consent and/or this Agreement is invalid, the parties agree that from (and including) the Suspension Expiry Date:
- (i) the Developer's obligation under this Agreement to transfer or dedicate the Land for Roads has full legal force and effect and where the Developer has not transferred or dedicated the whole or any part of the Land for Roads to the Council by the Suspension Expiry Date, the Developer must transfer or dedicate the Land for Roads to the Council by the dates or times referred to in Schedule 2;
 - (ii) the Developer gives its consent to the Council compulsorily acquiring the Land for Roads upon the terms agreed in this Agreement;
 - (iii) the Developer's obligation under this Agreement to enter into the Easement Instruments has full legal force and effect and where the Developer has not entered into the Easement Instruments by the Suspension Expiry Date, the Developer must enter into such Easement Instruments by the dates or times referred to in Schedule 2; and
 - (iv) the Developer gives its consent to the Council compulsorily acquiring the Public Space Instruments upon the terms agreed in this Agreement.
- (d) If, at the end of the Suspension Period, there is an effective Court declaration or order that the Development Consent and/or this Agreement is invalid, the parties agree that from (and including) the Suspension Expiry Date:
- (i) where the Developer has:
 - (A) transferred the whole or any part of the Land for Roads to the Council or the Council has compulsorily acquired the Land for Roads under this Agreement by the Suspension Expiry Date, the provisions of clause 30.2 (a) –(c) apply; or
 - (B) not transferred or dedicated the whole or any part of the Land for Roads to the Council by the Suspension Expiry Date:
 - i) the Developer has no obligation to transfer or dedicate the whole or part of Land for Roads

ATTACHMENT G

- and the Council cannot require the Developer to transfer or dedicate the Land for Roads; and
- ii) the consent provided under this Agreement by the Developer to the compulsory acquisition of the Land for Roads is withdrawn, is of no effect and the Council cannot compulsorily acquire the Dedicated Land for Roads pursuant to this Agreement;
- (ii) where the Developer has:
- (A) entered into any or all of the Easement Instruments by the Suspension Expiry Date or the Council has compulsorily acquired the Public Space Instruments under this Agreement, the provisions of clause 30.2 (d) apply; or
 - (B) not entered into any or all of the Easement Instruments by the Suspension Expiry Date:
 - i) the Developer has no obligation to enter into the Easement Instruments under this Agreement and the Council cannot require the Developer to enter into the Easement Instruments; and
 - ii) the consent provided under this Agreement by the Developer to the compulsory acquisition of the Public Space instruments is withdrawn, is of no effect and the Council cannot compulsorily acquire the Public Space Instruments;
 - (iii) the Developer has no obligation to register this Agreement on the titles to the Land;
 - (iv) the Council has no right to lodge a caveat over the land and in the event a caveat or caveats have been lodged over the Land under clause 13.2, the Council must proceed to register at the LPMA a withdrawal of that caveat in respect of that Land within 5 Business Days of that Court declaration or order.

30.2 Re-transfer of the Land for Roads and Release of the Easement Instruments

- (a) In the event that clause 30.1(d)(i)(A) applies to the Land for Roads, unless agreed otherwise by the Parties, the Council agrees to:
 - (i) make an application to the Minister for Roads under section 34 of the Roads Act 1993 to close the Land for Roads that have been transferred, dedicated to or compulsorily acquired by the Council as public roads within 20 Business Days after receipt of a notice from the Developer requesting re-transfer to it of the Land for Roads; and

ATTACHMENT G

- (ii) re-transfer or procure the re-transfer to the Developer of the Land for Roads within 20 Business Days of publication of the notice of closure of the Land for Roads as public roads under section 38 of the Roads Act 1993.

- (b)
 - (i) In the event the Council is required to re-transfer to the Developer the Transferred Lands pursuant to clause 30.2(a) the Council agrees to:
 - (i) deliver, or procure to be delivered, to the Developer:
 - A. a form of transfer in respect of the Transferred Lands in favour of the Developer for a consideration of \$1, executed by the Council and in registrable form except for acceptance by the Developer and marking by the Office of State Revenue; and
 - B. the certificate or certificates of title for the Transferred Lands;
 - any consents and other documentation in registrable form required for the transfer (and registration) of the Transferred Lands
 - (ii) take any other necessary action to give effect to the transfer of the title of the Transferred Lands to the Developer free of any encumbrances and affectations that were created after the date that the Council acquired that land (by way of transfer, dedication or compulsory acquisition) other than any obligation to pay any stamp duty and other taxes, charges and imposts in relation to the re-transfer of the Transferred Lands.

- (d) In the event that clause 30.1(d)(ii)(A) applies, unless agreed otherwise by the Parties, the Council must consent to the release of the Easement Instruments referred to in Schedules 5, 6 and 7 hereto over the Encumbered Land

31 FURTHER ACTS

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

32 COMPLIANCE WITH LAWS

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If a Law is changed or a new Law comes into force (both referred to as New Law) and the Developer is obliged by the New Law to do something or pay an amount for a purpose which it is already contractually obliged to do or pay under this Agreement then, to the extent only that the relevant obligation is required under both the New Law and this Agreement, compliance with this Agreement will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this Agreement.

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33 REQUIREMENTS UNDER SECTION 93F OF THE ACT

The parties acknowledge and agree that the table in Schedule 9 provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

34 COUNTERPARTS

This Agreement may be executed in any number of counterparts

EXECUTED as an Agreement.

CITY OF SYDNEY COUNCIL by its duly)
appointed attorney MARCIA CLAIRE)
DOHENY Power of Attorney)
registered number 994 book 4572)
in the presence of:)

Witness:

Attorney

VALAD COMMERCIAL MANAGEMENT)
LIMITED (ACN 101 802 046) by its duly)
appointed attorneys under Power of)
Attorney dated 17 June 2011)
registered number 273 book 4614 in)
the presence of:

Witness:

Attorney

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SCHEDULE 1 REFERENCE SCHEDULE
--

Item	Name	Description
1	Developer's Name Developer's ACN Developer's Address	VALAD COMMERCIAL MANAGEMENT LIMITED 101 802 046 Level 9, 1 Chifley Square Sydney NSW 2000
2	Council's Representative	Graham Jahn
3	Land	The whole of the land comprised in Lot 1 in DP217877 and in Lot 1 in DP220830 commonly known as "Goldfields House" 1 Alfred Street Sydney
4	Development Application No	Demolition of existing building and construction of new mixed use buildings of 55 stories and 15 stories including 197 apartments, public domain works and retail as set out in development application D/2010/2029
5	Monetary Contribution	\$ NOT APPLICABLE
6	Dedicated Land: -the Land for Roads	The Land for Roads comprising i)an area of approximately 44 sq. m. in George Street ii)two areas of approximately 109 sq. m. in total in Alfred Street iii)an area of approximately 29 sq. m. in Pitt Street all as shown marked on the Plan
7	Encumbered Land	The lands the subject of the Easement Instruments comprising i)The Through Site Link ii)The Land for Public Footway and Recreation iii)The Carriageway Land All as shown marked on the Plan
8	Public Benefits	Provide for recreation areas, lanes and streets, including an activated laneway network and fine grain uses, public art and granite infill paving in accordance with this Agreement and Sydney Local Environmental Plan 2005 (Amendment No. 2) and Central Sydney Development

ATTACHMENT G

		Control Plan 1996 (Amendment No. 20).
9	Guarantee Amount	<p>In relation to the road works set out in Item A of Schedule 3, an amount of \$118, 846.00 (one hundred and eighteen thousand, eight hundred and forty six dollars).</p> <p>Timing of provision of Guarantee Amount (clause 11.1)</p> <p>Prior to the issue of the first Construction Certificate for any component of Building A or Building B at or above ground level .</p> <p>In relation to the works to the Through Site Link set out in Item B of Schedule 3, an amount of \$186,105.00 (one hundred and eighty six thousand, one hundred and five dollars)</p> <p>Timing of provision of Guarantee Amount (clause 11.1)</p> <p>Prior to the issue of the first Construction Certificate for any component of Building A or Building B at or above ground level .</p> <p>In relation to the works to the Land for Public Footway and Recreation set out in Item C of Schedule 3, an amount of \$382,005.00 (three hundred and eighty two thousand and five dollars)</p> <p>Timing of provision of Guarantee Amount (clause 11.1)</p> <p>Prior to the issue of the first Construction Certificate for any component of Building A or Building B at or above ground level .</p> <p>In relation to the Proposed Instrument – Right of Carriageway and Carriageway Works set out in Item D of Schedule 3, an amount of \$190,000.00 (one hundred and ninety thousand dollars)</p> <p>Timing of provision of Guarantee Amount (clause 11.1)</p> <p>Prior to the issue of the first Construction Certificate for any part of the</p>

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		<p>Development.</p> <p>In relation to the works of Public Art set out in Item E of Schedule 3, an amount of \$1, 500,000.00 (one million five hundred thousand dollars).</p> <p>Timing of provision of Guarantee Amount (clause 11.1)</p> <p>Prior to the issue of the first Construction Certificate for any component of Building A or Building B at or above ground level .</p>
10	Public Liability Insurance	\$20 million
11	<p>Notices</p> <p>Council Attention Address Phone: Fax Number Email:</p> <p>Developer Attention Address Phone: Fax Number Email:</p>	<p>Graham Jahn, Director of Development Town Hall House, 456 Kent Street Sydney 2000</p> <p><u>gjahn@cityofsydney.nsw.gov.au</u></p> <p>Peter Malpass Project Director Level 9, 1 Chifley Square SYDNEY N.S.W. 2000 8257 6766 8257 6655 <u>Peter.malpass@valad.com.au</u></p>

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SCHEDULE 2 TIMING OF DEVELOPMENT CONTRIBUTIONS		
Item	Development Contribution	Timing
1	Though Site Link and Developer's Art Work Clauses 6.2 and 9.7	Before the date of issue of the First Occupation Certificate for (a) any component of Building A, or (b) any component of Building B, whichever date comes later, but in any event no later than the Sunset Date. Sunset Date is 5 years from the date of the issue of the First Occupation Certificate for (a) any component of Building A; (b) any component of Building B, whichever date comes earlier. or such other time as agreed in writing by the Parties.
2	Land for Public Footway and Recreation Clause 6.4	For the North West Area (Building A) Prior to the issue of the First Occupation Certificate for any component of Building A or such other time as agreed in writing by the Parties For the North East Area (Building B) Prior to the issue of the First Occupation Certificate for any component of Building B or such other time as agreed in writing by the Parties For the West Area (Building B) Prior to the issue of the First Occupation Certificate for any component of Building B or such other time as agreed in writing by the Parties.
3	Land for Roads Clause 6.1(a)	For the North West Road Area (Building A) Prior to the issue of the First Occupation Certificate for any component of Building A or such other time as agreed in writing by the Parties For the North East Road Area (Building B) Prior to the issue of the First Occupation Certificate for any component of Building B or such other time as agreed in writing by the Parties For the North Road Area to the North of Building A Prior to the issue of the First Occupation Certificate for any component of

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		Building A or such other time as agreed in writing by the Parties For the North Road Area to the North of Building B Prior to the issue of the First Occupation Certificate for any component of Building B or such other time as agreed in writing by the Parties
4	Carriageway Clause 6.5	Prior to the issue of the First Occupation Certificate for: (a) any component of Building A; or (b) any component of Building B, whichever occurs first, or such other time as agreed in writing by the Parties
5	Carriageway works Clause 6.6	Prior to the issue of the First Occupation Certificate for: (a) any component of Building A; or (b) any component of Building B, whichever occurs first, or such other time as agreed in writing by the Parties

SCHEDULE 3 DEVELOPER'S WORKS

SECTION 1 – THE WORKS

ITEM A The Land for Roads The Developer is to procure, design and install Austral Black granite paving and all associated structures and works including but not limited to:

- demolition of existing structures;
- site preparation and excavation works;
- subgrade, base course, reinforcing and mortar bed;
- 50mm depth Austral Black granite pavers;
- finished levels to Council approved alignment levels including utility pit lid adjustments;
- stormwater and drainage;
- lighting including light poles and under awning lighting;
- signage;
- traffic and parking controls;
- street trees and pits, planter beds, soil, mulch and watering systems; and
- street furniture

All materials, works and workmanship are to be in accordance with Council requirements and standards set out in Schedule 4 hereof.

Works must be undertaken by the Developer at no cost to Council within the Lands for Roads identified as A1, A2, B1 and B2 on the Plan.

Date/Time for Completion of Item A

By the same dates and times specified in Item 3 of Schedule 2 for each particular road area.

ITEM B The Through Site Link

The Developer is to procure, design and install Austral Black granite paving and all associated structures and works including but not limited to:

- demolition of existing structures;
- site preparation and excavation works;
- subgrade, base course, reinforcing and mortar bed;
- 50mm depth Austral Black granite pavers;
- finished levels to Council approved alignment levels including utility pit lid adjustments;
- stormwater and drainage;
- lighting including light poles and under awning lighting;
- signage;
- street furniture
- landscaping
- public art

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All materials, works and workmanship are to be in accordance with Council requirements and standards set out in Schedule 4 hereof.

Works must be undertaken by the Developer at no cost to Council within the area of land identified as TSL on the Plan

Date/Time for Completion of Item B:

By the same date and time specified in Item 1 of Schedule 2.

ITEM C The Land for Public Footway and Recreation

The Developer is to procure, design and install Austral Black granite paving and all associated structures and works including but not limited to:

- demolition of existing structures;
- site preparation and excavation works;
- subgrade, base course, reinforcing and mortar bed;
- 50mm depth Austral Black granite pavers;
- finished levels to Council approved alignment levels including utility pit lid adjustments;
- stormwater and drainage;
- lighting including light poles and under awning lighting;
- signage;
- Landscaping; and
- street furniture

All materials, works and workmanship are to be in accordance with Council requirements and standards as set out in Schedule 4 thereof.

Works must be undertaken by the Developer at no cost to Council within the areas of land identified as FR1, FR2 and FR3 on the Plan.

Date/Time for Completion of Item C:

By the same dates and times specified in Item 2 of Schedule 2 for each particular area.

ITEM D The Carriageway Works

The Developer is to procure, design and install a reinforced concrete Carriageway together with all associated structures and works including but not limited to:

- Reinforced concrete ramp with non slip surface
- Lighting
- Construction of blockwork 'break through' panel at the property boundary where shown on the Plan

All materials, works and workmanship are to be in accordance with Council requirements and standards as set out in Schedule 4 thereof.

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Date/Time for Completion of Item D:

By the same date and time specified in Item 5 of Schedule 2.

ITEM E The Public Art Work

ITEM E SECTION 1 – Description of Work

The Developer is to commission the design, fabrication and installation of a piece of public art, the final form of which is to be developed in consultation with and approved by the Council as generally identified in this Schedule and Schedule 10. The work is to incorporate a design response to the context and be made of materials which exhibit a robust character, suitable for the urban location, and allow longevity in the location.

ITEM E SECTION 2

Estimated Costs

\$1.5 million (one million five hundred thousand dollars).

ITEM E SECTION 3 Relevant Plans

The procurement process is to follow a three stage process, being:

1. Development of a concept in accordance with Item E of this Schedule Section 4 below and Schedule 10, such concept to be submitted to Council for approval (See also clauses 7 and 8 of this Agreement);
2. Following approval in principle by Council, development of detailed design drawings and calculations for the purposes of fabrication, and installation, again submitted to Council for checking and verification before proceeding on site (see clause 8 of this Agreement).
3. Fabrication, construction, installation and commissioning of the work on the land.

ITEM E Section 4 – Design Refinement

a) Nature of Work

The Developer is to commission a public art work (the “Developer’s Art Work”) which:

- A) reflects the iconic nature of the location;
- B) has a visual predominance to act as a fulcrum or landmark work;

ATTACHMENT G

- C) responds to the both immediate context and other items in the vicinity of the land
- D) is of a content which is acceptable to (and accepted by) the Council, as being appropriate in a location of the public nature and prominence of the land; and
- E) which is inherently of a nature and type where degradation (including deterioration due to ageing; adverse weather conditions; graffiti, or other forms of vandalism) are reasonably capable of being rectified; and
- F) is of nature, content, and materials which is may reasonably experience longevity in the context (including a safe and attractive appearance).

The brief for the work is to be submitted to Council for approval before commissioning of the work. The brief is incorporate the elements identified in this Part E of this Schedule and in Schedule 10.

b) Materials

The Developer's Art Work is to be fabricated, constructed and installed (as the case may be) with materials of a high quality and durability, free from defects, finished in a manner which is appropriate for the external location, and public nature, of the Developer's Art Work ,

c) Intellectual Property

The Developer must ensure that the artist confers sufficient intellectual property rights upon the Council to:

- (a) recognise, and record, the artwork (including without limitation in the Council's publications; website; and "open museum" register, or in model form);
- (b) perform routine and emergency maintenance upon the Developer's Art Work (such as cleaning and graffiti removal) without reference to the artist;
- (c) in the event that the Developer's Art Work represents a hazard, relocate the artwork without reference to the artist;
- (d) (following consultation with the artist) remove or relocate the Developer's Art Work.

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Date/Time for Completion of Item E:

By the same date and time specified in Item 1 of Schedule 2.

SECTION 2 ESTIMATED COSTS OF DEVELOPER'S WORKS

G) The Land for Roads

\$118,846.00 (one hundred and eighteen thousand, eight hundred and forty six dollars).

H) The Through Site Link

\$186,105.00 (one hundred and eighty six thousand, one hundred and five dollars)

C) The Land for Public Footway and Recreation

\$382,005.00 (three hundred and eighty two thousand and five dollars)

D) The Carriageway Works

\$190,000.00 (one hundred and ninety thousand dollars)

E) The Public Art Works

\$1,500,000.00 (one million five hundred thousand dollars)

All estimated costs in this Schedule 3 exclude GST

SCHEDULE 4 STANDARDS

General

The standards referred to in this Schedule 4 are included for information purposes only, and as a guide to the relevant standards for the general nature of the work of the kind identified as Developer's Works in this Agreement. The Council makes no representation or warranty whatsoever as to the currency of the standards identified, or their application to the final design of any particular element. If any standard is replaced or supplemented, then a reference will be deemed to include any other standards as may replace or supplement that standard.

Conflict

In the event that any Australian Standard prescribes or describes a different level of material, finish, work or workmanship, than those contained in any Council Standard, then the higher of the two standards will apply. In the event that one or more Council Standards conflict with another Council Standard, then the Council must nominate the correct and applicable Council Standard. The Council's decision as to the applicable standard in the event of conflict is final.

Australian Standards

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 4454 Composts, soil conditioners and mulches
- AS 1720 Timber structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1428 Design for Access and Mobility
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1743 Road signs
- AS4586 Slip Resistance Classification of New Pedestrian Surface Materials

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- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1742 Manual of uniform traffic control devices

Council Standards (All Works)

- City of Sydney Contaminated Lands DCP 2004
- Interim draft Sydney Street Design Code
- Interim draft Sydney Lights Design Code
- City of Sydney Access Policy
- City of Sydney Public Domain Manual
- City of Sydney Awning Policy

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SCHEDULE 5
THROUGH SITE LINK: PROPOSED INSTRUMENT RIGHT OF PUBLIC ACCESS

See separate document

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**SCHEDULE 6
LAND FOR PUBLIC FOOTWAY AND RECREATION: PROPOSED INSTRUMENT RIGHT
OF FOOTWAY AND RECREATION**

See separate document

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SCHEDULE 7
RIGHT OF CARRIAGEWAY: PROPOSED INSTRUMENT

See separate document

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SCHEDULE 8

**PLAN OF PROPOSED SUBDIVISION OF LOT 1 DP 220830 AND LOT 1 DP 217877
DATED 19 MARCH 2012 (ISSUE 8) PREPARED BY MARK ANDREW (SURVEYOR)
SHOWING ADJOINING LAND, BARRIER FENCE, LAND FOR ROADS, THROUGH
SITE LINK, LAND FOR PUBLIC FOOTWAY AND RECREATION AND CARRIAGEWAY
LAND**

See separate document

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SCHEDULE 9 REQUIREMENTS UNDER SECTION 93F	
Requirement under the Act	This Agreement
<p>Planning instrument and/or development application - (section 93F(1))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument</p> <p>(b) made, or proposes to make, a development or project application</p> <p>(c) entered into an agreement with, or is otherwise associated with a person, to whom paragraph (a) or (b) applies</p>	<p>(a) No</p> <p>(b) Yes</p> <p>(c) No</p>
Description of land to which this Agreement applies (Section 93F(3)(a))	The whole of the Land
Description of the development to which this Agreement applies - (section 93F(3)(b))	The Development Consent
The scope, timing and manner of delivery of contributions required by this Agreement (section 93F(3) (c))	See Schedule 2
Applicability of section 94 of the Act (Section 93F(3)(d))	The application of section 94 of the Act and s.61 of the City of Sydney Act 1988 is not excluded for the Development
Applicability of section 94A of the Act (Section 93F(3)(d))	The application of section 94A is not excluded for the Development
Applicability of section 94EF of the Act - (Section 93F(3)(d))	Not excluded
Consideration of benefits under this Agreement if section 94 applies (section 93F (3) (e))	The benefits under this Agreement are not to be taken into account
Mechanism for Dispute Resolution (Section 93 F(3)(f))	See clause 14
Enforcement of this Agreement (section 93 F(3)(g))	See clauses 7.4, 11, 13, 29 and 30
No obligation to grant consent or exercise functions(section 93 F (9))	See clause 23

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SCHEDULE 10 PUBLIC ART SUBMISSION REQUIREMENTS

Public Art

strategy statement showing intention of the Public Art including:

- response to any relevant Council plans, policies, and reports
- relationship or response to development and surrounding urban domain (for example, the visual or historic “cues” to the work; the links to other elements in the public domain);
- process mapping for the process of concept development, documentation ; and fabrication/installation (including, without limitation, whether the work involves integration with the construction of the public domain, or is intended to be installed on site at a later stage)
- identification of any structural or other technical requirements (eg. footings; electrical systems integration; water systems integration and reticulation) and the manner in which these will be addressed; and
- any anticipated needs for the ongoing maintenance of the work, including maintenance of any associated plant and equipment; and
- the experience of the artist, any contractors, or proposed subcontractors, in respect of the delivery of a work of the nature of the Developer’s Art Work.

.....

Signature

Name (printed)

.....

Signature

Name (printed)

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SCHEDULE 5
THROUGH SITE LINK: PROPOSED INSTRUMENT RIGHT OF PUBLIC ACCESS

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

Lengths are in metres

(Sheet 1 of 11 sheets)

Plan: **Plan of Easement for right of public access and Positive Covenant covered by Plan No.**

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, right of carriageway or restriction to be created and referred to in the plan.	Burdened (lot(s) or parcel(s):	Benefitted lot(s), road(s), bodies or Prescribed Authorities:
1.	Right of public access marked TSL on the Plan, 6m wide and variable, limited in height and in depth as delineated on the Plan (Through-Site Link)	Lot 1 DP220830 Lot 1 DP217877	Council of the City of Sydney
2.	Positive covenant in relation to the right of public access	Lot 1 DP220830 Lot 1 DP217877	Council of the City of Sydney

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 2 of 11 sheets)

Plan:

**Plan of Easement for right of public
access and Positive Covenant covered by
Plan No.**

**Full name and address of the owner of
the land:**

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

Part 2 (Terms)

1 Interpretation

1.1 Definitions

In this Instrument:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under the Act.

Authorised User means every person authorised by the Council of the City of Sydney for the purposes of the Easement created by this Instrument, including:

- (a) employees, agents, servants, contractors, workmen and licensees of the Council; and
- (b) members of the public.

Barrier Fence means the fence erected at the southern end of the Easement Site as at the date of this Instrument.

Council means the Council of the City of Sydney and its successors.

Easement means the easement in this Instrument and includes the conditions in relation to that easement.

Easement Site means, in relation to the Easement in this Instrument:

- (a) the site of the Easement on the Plan, including any limitations by height or depth; and

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 3 of 11 sheets)

Plan:

Plan of Easement for right of public access and Positive Covenant covered by Plan No.

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

(b) all items within the site of the Easement identified on the Plan which are the subject of the Easement.

Emergency Situation means any circumstance involving a need, for reasons of safety, for evacuation or egress from a building or other place, including fire, earthquake, flooding, terrorist activity and any training or test of such evacuation or egress.

Instrument means this instrument under section 88B of the *Conveyancing Act 1919* (NSW).

Lot Burdened means the land referred to in Part 1 of this Instrument as being the land burdened by the Easement, or any part of it.

Owner of the Lot Burdened means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.

Owner of the Right of Way means the registered proprietor of the freehold estate in the Right of Way.

Plan means the plan of proposed subdivision of Lot 1 DP 220830 and Lot 1 DP 217877 dated 19 March 2012 (Issue 8) prepared by Mark Andrew (Surveyor) registered together with this Instrument.

Planning Agreement means the planning agreement dated [#] between the Developer and the Council entered into pursuant to subdivision 2 of Division 6 of Part 4 of the Act.

Right of Way means a right of way immediately abutting the southern end of the Easement Site, at the date of this Instrument forming part of Lot 182 in DP 606865.

Site means the land known as 1 Alfred Street, Sydney and comprising folio identifiers 1/220830 and 1/217877.

VCML means Valad Commercial Management Limited (ACN 101 802 046).

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 4 of 11 sheets)

Plan:

**Plan of Easement for right of public
access and Positive Covenant covered by
Plan No.**

**Full name and address of the owner of
the land:**

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

1.2 Interpretation

- (a) The singular includes the plural and the plural includes the singular.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument.
- (e) Unless stated otherwise, one provision does not limit the effect of another provision.
- (f) A reference to any law or to any provision of any law includes any modification or re-enactment of it, any legislative provisions substituted for it and all regulations and statutory instruments issued under it or them.
- (g) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (h) Headings in this Instrument are for information purposes only and do not affect the interpretation of this Instrument.
- (i) A reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (j) An agreement on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally.
- (k) **Includes** means includes but without limitation.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 5 of 11 sheets)

Plan:

**Plan of Easement for right of public
access and Positive Covenant covered by
Plan No.**

**Full name and address of the owner of
the land:** Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

1.3 **Conditions**

Each of the provisions of this Easement will constitute and be covenants and agreements by and between the Owner of the Lot Burdened and the Council for themselves and their respective successors, assigns and transferees with the intention and agreement that the benefit and burden of such covenants and agreements will pass with the benefit and burden of the Easement.

1.4 **No fetter**

- (a) Nothing in this Instrument in any way restricts or otherwise affects the unfettered discretion of the Council in the exercise of its statutory powers as a public authority.
- (b) If any conflict arises between the unfettered discretion of the Council in the exercise of its powers as a statutory authority and the performance of any right or obligation in this Instrument, the former prevails.

1.5 **Limitation of Trustee's Capacity and Liability**

- (a) This clause applies to this Instrument for so long as (and to the extent that) VCML is the trustee of the Valad Fields Trust (Trust) and the Lot Burdened forms part of the assets of the Trust.
- (b) VCML enters into this Instrument in its capacity as trustee of the Trust and not in its personal capacity.
- (c) The liability of VCML to the Council under or arising out of or in connection with this Instrument is limited to and can only be enforced against VCML to the extent to which it can be satisfied from the assets of the Trust. This clause does not apply to the extent to which there is a reduction in the right of indemnification out of the assets of the Trust of VCML due to fraud or wilful default by VCML or its breach of duty, breach of trust or negligence. VCML warrants to the Council that it holds the benefit of a right of indemnification out of the assets of the Trust to the extent provided for in the Trust deed.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 6 of 11 sheets)

Plan:

Plan of Easement for right of public access and Positive Covenant covered by Plan No.

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

- (d) The Council has no right to an indemnity from the members of the Trust against any liability or obligations of VCML to the Council.
- (e) Subject to paragraph 1.5(a), this clause 1.5 applies despite any other provision of this Instrument and extends to all liabilities and obligations of VCML to the Council under this Instrument.

1.6 **GST**

- (a) In this clause 1.6:
 - (i) **GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
 - (ii) terms used in this clause which are not defined in this Instrument, but which are defined in the GST Law, have the meanings given in the GST Law.
- (b) Unless otherwise stated in this Instrument, amounts payable, and consideration to be provided, under any other provision of this document exclude GST.
- (c) If GST is payable on a supply made in connection with this Instrument, the recipient must pay the party making the supply (supplier) an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice to the recipient.
- (d) If an adjustment event arises in connection with a supply made in connection with this Instrument:
 - (i) the supplier must recalculate the GST payable to reflect the adjustment event;
 - (ii) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and

Authorised Person
Council of the City of Sydney

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(Sheet 7 of 11 sheets)

Plan:

Plan of Easement for right of public access and Positive Covenant covered by Plan No.

Full name and address of the owner of the land:

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

- (iii) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (e) If a payment to a party under this Instrument is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, the payment will be:
 - (i) reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense; and
 - (ii) then, increased by an amount equal to the GST payable if and to the extent that the payment is consideration for a taxable supply.

2 Terms of Right of Public Access numbered 1 above

2.1 Terms of the Easement

Subject to clauses 2.3, 2.4 and 2.5, the Owner of the Lot Burdened grants:

- (a) to the Council and its Authorised Users full and free right to go, pass and repossess over the Easement Site at all times:
 - (i) on foot or with wheelchairs or other disabled access aids, but excluding all other vehicles; and
 - (ii) with or without animals,for all lawful purposes; and
- (b) to the Council the right to erect within the Easement Site such artworks, street furniture, directional signage and other improvements which the Council considers consistent with the purpose of the Easement Site specified in clause 2.2, provided the Council obtains the consent of the

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 8 of 11 sheets)

Plan:

Plan of Easement for right of public access and Positive Covenant covered by Plan No.

Full name and address of the owner of the land:

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

Owner of the Lot Burdened to such erection (which consent may not be unreasonably withheld).

2.2 Purpose of Easement

The Council and the Owner of the Lot Burdened acknowledge and agree that the Easement is being provided at no cost to the public and is for the purpose of providing access over the Easement Site to any member of the public.

2.3 Works to Lot Burdened

- (a) Subject to ensuring the provision of access in accordance with clause 2.2 and compliance with the requirements of clause 2.4, the Owner of the Lot Burdened may carry out works of any nature on or about the Lot Burdened, including constructing, installing, removing, redeveloping or otherwise changing improvements on or about the Easement Site.
- (b) Despite clause 2.3(a), the Owner of the Lot Burdened may not install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor retail premises, notice boards or any other improvement at ground level or balconies above ground level within the Easement Site unless the Owner of the Lot Burdened obtains the consent of the Council to such erection (which consent may not be unreasonably withheld).

2.4 Restrictions on access

The Owner of the Lot Burdened may temporarily close, or temporarily restrict access through part (but not all) of the Easement Site for the purpose of, or as a result of:

- (a) the construction, repair or maintenance of any improvement on the Site; or
- (b) carrying out obligations under clause 3.1 or any other obligation under this Instrument,

provided that:

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 9 of 11 sheets)

Plan:

**Plan of Easement for right of public
access and Positive Covenant covered by
Plan No.**

**Full name and address of the owner of
the land:** Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

- (c) such restriction is for a period not exceeding one month or such other period of time as agreed by the Council; and
- (d) the Owner of the Lot Burdened:
 - (i) obtains the prior written consent of the Council and complies with any conditions imposed on that consent; and
 - (ii) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1.

2.5 Emergencies

- (a) The Owner of the Lot Burdened may restrict temporarily access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Council and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible.
- (b) The Council may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public if it reasonably forms the view that such access is unsafe.
- (c) Despite any other provision of this Instrument:
 - (i) the Owner of the Lot Burdened must allow the Easement Site to be used for access by all emergency and other essential service organisations; and
 - (ii) the Owner of the Lot Burdened must not interfere with such access.

2.6 Indemnity

The Owner of the Lot Burdened indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council and any of its Authorised Users except where the claim or damage is caused by, or contributed to by, the wilful or negligent act or omission of the Council.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 10 of 11 sheets)

Plan:

Plan of Easement for right of public access and Positive Covenant covered by Plan No.

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

2.7 Persons empowered to release, vary or modify the Right of Public Access

This Right of Public Access may only be released, varied or modified with the consent of both the Council and the Owner of the Lot Burdened.

3 Terms of Positive Covenant in relation to the Right of Public Access numbered 1 on the Plan

3.1 Maintenance of Easement Site

The Owner of the Lot Burdened must:

- (a) at all times, maintain the Easement Site (including the lighting) in good repair;
- (b) not permit the Easement Site to fall into disrepair so that the use of the Easement Site becomes unsafe, impractical or impossible; and
- (c) keep the Easement Site clean and free from rubbish;
- (d) if required by Council, permit the Council to enter the Easement Site with equipment, machinery and street sweeping vehicles to clean the Easement Site after special events, including New Year's Eve; and
- (e) if required by Council, upgrade and refurbish the Easement Site,

in accordance with the reasonable requirements of, and to the reasonable satisfaction of, the Council, including in accordance with the requirements of the Council's Public Domain Manual.

3.2 Removal of barrier fence

The Owner of the Lot Burdened must remove the Barrier Fence (to the reasonable satisfaction of the Council) within 14 days of receipt of notice from the Council of the registration of a right of way benefiting the Council and burdening the land burdened by the Right of Way, in substantially the same terms as the Right of Way.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 11 of 11 sheets)

Plan:

**Plan of Easement for right of public
access and Positive Covenant covered by
Plan No.**

**Full name and address of the owner of
the land:**

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

3.3 **Public Liability Insurance**

- (a) The Owner of the Lot Burdened must take out and maintain a public liability insurance policy with respect to any liabilities to the Council or any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by the Council (acting reasonably).
- (b) The policy referred to in paragraph 3.3(a) must:
 - (i) note the Council as an interested party; and
 - (ii) be taken out and maintained with an insurer licensed by the Australian Prudential Regulation Authority to operate in Australia or have an investment grade security rating from an industry recognised rating agency such as Standard and Poors, Moodys or Bests.

3.4 **Persons empowered to release, vary or modify the Positive Covenant**

This Positive Covenant may only be released, varied or modified with the consent of both Council and the Owner of the Lot Burdened.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

**SCHEDULE 6
LAND FOR PUBLIC ACCESS: PROPOSED INSTRUMENT RIGHT OF FOOTWAY AND
RECREATION**

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

Lengths are in metres

(Sheet 1 of 10 sheets)

Plan: Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, right of carriageway or restriction to be created and referred to in the plan.	Burdened (lot(s) or parcel(s):	Benefitted lot(s), road(s), bodies or Prescribed Authorities:
1.	Right of Footway and Recreation marked as FR1, FR2 and FR3 on the Plan and limited in height and depth as delineated on the Plan. (Public open space)	Lot 1 DP220830 Lot 1 DP217877	Council of the City of Sydney
2.	Positive covenant in relation to the right of Footway and Recreation	Lot 1 DP220830 Lot 1 DP217877	Council of the City of Sydney

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 2 of 10 sheets)

Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land:

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

Part 2 (Terms)

1 Interpretation

1.1 Definitions

In this Instrument:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under that Act.

Authorised User means every person authorised by the Council of the City of Sydney for the purposes of the Easement created by this Instrument, including:

- (a) employees, agents, servants, contractors, workmen and licensees of the Council; and
- (b) members of the public.

Council means the Council of the City of Sydney and its successors.

Easement means the easement in this Instrument and includes the conditions in relation to that easement.

Easement Site means, in relation to the Easement in this Instrument:

- (a) the site of the Easement on the Plan, including any limitations by height or depth; and
- (b) all items within the site of the Easement identified on the Plan which are the subject of the Easement.

Emergency Situation means any circumstance involving a need, for reasons of safety, for evacuation or egress from a building or other place, including fire,

Authorised Person
Council of the City of Sydney

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Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land:

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

earthquake, flooding, terrorist activity and any training or test of such evacuation or egress.

Instrument means this instrument under section 88B of the *Conveyancing Act 1919* (NSW).

Lot Burdened means the land referred to in Part 1 of this Instrument as being the land burdened by the Easement.

Owner of the Lot Burdened means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.

Plan means the plan of proposed subdivision of Lot 1 DP 220830 and Lot 1 DP 217877 dated 19 March 2012 (Issue 8) prepared by Mark Andrew (Surveyor) registered together with this Instrument.

Planning Agreement means the planning agreement dated [#] between the Developer and the Council entered into pursuant to subdivision 2 of Division 6 of Part 4 of the Act.

Site means the land known as 1 Alfred Street, Sydney and comprising folio identifiers 1/220830 and 1/217877.

VCML means Valad Commercial Management Limited (ACN 101 802 046).

1.2 Interpretation

- (a) The singular includes the plural and the plural includes the singular.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 4 of 10 sheets)

Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

- (e) Unless stated otherwise, one provision does not limit the effect of another provision.
- (f) A reference to any law or to any provision of any law includes any modification or re-enactment of it, any legislative provisions substituted for it and all regulations and statutory instruments issued under it or them.
- (g) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (h) Headings in this Instrument are for information purposes only and do not affect the interpretation of this Instrument.
- (i) A reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (j) An agreement on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally.
- (k) **Includes** means includes but without limitation.

1.3 Conditions

Each of the provisions of this Easement will constitute and be covenants and agreements by and between the Owner of the Lot Burdened and the Council for themselves and their respective successors, assigns and transferees with the intention and agreement that the benefit and burden of such covenants and agreements will pass with the benefit and burden of the Easement.

1.4 No fetter

- (a) Nothing in this Instrument in any way restricts or otherwise affects the unfettered discretion of the Council in the exercise of its statutory powers as a public authority.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 5 of 10 sheets)

Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

- (b) If any conflict arises between the unfettered discretion of the Council in the exercise of its powers as a statutory authority and the performance of any right or obligation in this Instrument, the former prevails.

1.5 Limitation of Trustee's Capacity and Liability

- (a) This clause applies to this Instrument for so long as (and to the extent that) VCML is the trustee of the Valad Fields Trust (Trust) and the Lot Burdened forms part of the assets of the Trust.
- (b) VCML enters into this Instrument in its capacity as trustee of the Trust and not in its personal capacity.
- (c) The liability of VCML to the Council under or arising out of or in connection with this Instrument is limited to and can only be enforced against VCML to the extent to which it can be satisfied from the assets of the Trust. This clause does not apply to the extent to which there is a reduction in the right of indemnification out of the assets of the Trust of VCML due to fraud or wilful default by VCML or its breach of duty, breach of trust or negligence. VCML warrants to the Council that it holds the benefit of a right of indemnification out of the assets of the Trust to the extent provided for in the Trust deed.
- (d) The Council has no right to an indemnity from the members of the Trust against any liability or obligations of VCML to the Council.
- (e) Subject to paragraph 1.5(a), this clause 1.5 applies despite any other provision of this Instrument and extends to all liabilities and obligations of VCML to the Council under this Instrument.

1.6 GST

- (a) In this clause 1.6:
- (i) **GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 6 of 10 sheets)

Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land:

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

- (ii) terms used in this clause which are not defined in this Instrument, but which are defined in the GST Law, have the meanings given in the GST Law.
- (b) Unless otherwise stated in this Instrument, amounts payable, and consideration to be provided, under any other provision of this document exclude GST.
- (c) If GST is payable on a supply made in connection with this Instrument, the recipient must pay the party making the supply (supplier) an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice to the recipient.
- (d) If an adjustment event arises in connection with a supply made in connection with this Instrument:
 - (i) the supplier must recalculate the GST payable to reflect the adjustment event;
 - (ii) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
 - (iii) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (e) If a payment to a party under this Instrument is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, the payment will be:
 - (i) reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense; and
 - (ii) then, increased by an amount equal to the GST payable if and to the extent that the payment is consideration for a taxable supply.

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 7 of 10 sheets)

Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land:

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

2 Terms of Right of Footway numbered 1 above

2.1 Terms of the Easement

Subject to clauses 2.3, 2.4 and 2.5, the Owner of the Lot Burdened grants to the Council and its Authorised Users full and free right to go, pass and repass over the Easement Site and use the Easement Site for passive recreational purposes at all times:

- (a) on foot; or
- (b) with wheelchairs or other disabled access aids, including guide dogs but excluding all other vehicles and animals,

for all lawful purposes.

2.2 Purpose of Easement

The Council and the Owner of the Lot Burdened acknowledge and agree that the Easement is being provided at no cost to the public and is for the purpose of enabling the use of the Easement Site as public open space by any member of the public.

2.3 Works to Lot Burdened

Subject to ensuring the provision of public open space in accordance with clause 2.2 and compliance with the requirements of clause 2.4 the Owner of the Lot Burdened may carry out works of any nature on or about the Lot Burdened, including without limitation, constructing, installing, removing, redeveloping or otherwise changing improvements on or about the Easement Site.

2.4 Restriction on rights

The Owner of the Lot Burdened must not grant to any person any licence or other right to occupy any part of the Easement Site without the consent of the Council, which may be withheld by the Council if it determines that the proposed right of

Authorised Person
Council of the City of Sydney

ATTACHMENT G

(Sheet 8 of 10 sheets)

Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land:

Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
Sydney NSW 2000

occupation is inconsistent with the use of the Easement Site for the purposes permitted by this Easement.

2.5 Restrictions on access

The Owner of the Lot Burdened may temporarily restrict use of part (but not all of) the Easement Site for the purpose of, or as a result of:

- (a) the construction, repair or maintenance of any improvement on the Site; or
- (b) carrying out obligations under clause 3.1 or any other obligation under this Instrument,

provided that:

- (c) such restriction is for a period not exceeding one month; and
- (d) the Owner of the Lot Burdened:
 - (i) obtains the prior written consent of the Council and complies with any conditions imposed on that consent; and
 - (ii) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1.

2.6 Emergencies

- (a) The Owner of the Lot Burdened may restrict temporarily access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Council and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible.
- (b) The Council may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public if it reasonably forms the view that such access is unsafe.

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ATTACHMENT G

(Sheet 9 of 10 sheets)

Plan:

Plan of Easement for right of footway and recreation and Positive Covenant covered by Plan No.

Full name and address of the owner of the land: Valad Commercial Management Limited
(ACN 101 802 046)
Level 9, 1 Chifley Square
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- (c) Despite any other provision of this Instrument:
- (i) the Owner of the Lot Burdened must allow the Easement Site to be used for access by all emergency and other essential service organisations; and
 - (ii) the Owner of the Lot Burdened must not interfere with such access.

2.7 Indemnity

The Owner of the Lot Burdened indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council and any of its Authorised Users except where the claim or damage is caused by, or contributed to by, the wilful or negligent act or omission of the Council.

2.8 Persons empowered to release, vary or modify the Right of Footway

This Right of Footway may only be released, varied or modified with the consent of both Council and the Owner of the Lot Burdened.

3 Terms of Positive Covenant in relation to the Right of Footway numbered 1 on the Plan

3.1 Maintenance of Easement Site

The Owner of the Lot Burdened must:

- (a) at all times, maintain the Easement Site (including the lighting) in good repair;
- (b) not permit the Easement Site to fall into disrepair so that the use of the Easement Site becomes unsafe, impractical or impossible; and
- (c) keep the Easement Site clean and free from rubbish; and

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Plan:

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- (d) if required by Council, upgrade and refurbish the Easement Site, in accordance with the reasonable requirements of, and to the reasonable satisfaction of, the Council, including in accordance with the requirements of the Council's Public Domain Manual.

3.2 Public Liability Insurance

- (a) The Owner of the Lot Burdened must take out and maintain a public liability insurance policy with respect to any liabilities to the Council or any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by the Council (acting reasonably).
- (b) The policy referred to in paragraph 3.2(a) must:
- (i) note the Council as an interested party; and
 - (ii) be taken out and maintained with an insurer licensed by the Australian Prudential Regulation Authority to operate in Australia or have an investment grade security rating from an industry recognised rating agency such as Standard and Poors, Moodys or Bests.

3.3 Persons empowered to release, vary or modify the Positive Covenant

This Positive Covenant may only be released, varied or modified with the consent of both Council and the Owner of the Lot Burdened.

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ATTACHMENT G

SCHEDULE 7 PROPOSED INSTRUMENT RIGHT OF CARRIAGEWAY

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

Lengths are in metres

(Sheet 1 of 15 sheets)

Plan: **Plan of Easement for right of carriageway and Positive Covenant covered by Plan No.**

Full name and address of the owner of the land: Valad Commercial Management Limited
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Sydney NSW 2000

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, right of carriageway or restriction to be created and referred to in the plan.	Burdened (lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1.	Right of carriageway marked as C1 on the Plan limited in height and depth as shown on the Plan (Entry ramp and breakthrough)	Lot 1 DP220830 Lot 1 DP217877	Lot 1 DP537286 Lot 180 DP606866

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(Sheet 2 of 15 sheets)

Plan: **Plan of Easement for right of carriageway
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No.**

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Level 9, 1 Chifley Square
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Part 2 (Terms)

1 Interpretation

1.1 Definitions

In this Instrument:

Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended) and includes any regulations made under the Act.

Authorised User means every person authorised by the Owner of the Lot Benefited for the purposes of the Easement created by this Instrument, including employees, agents, servants, contractors, workmen, tenants and invitees of the Owner of the Lot Benefited.

Authority means any local, state or federal government statutory or public authority or corporation having jurisdiction over the Lot Benefited or the Lot Burdened and includes any consent authority.

Breakthrough means the fixed opening at the southern boundary of the Easement Site where it meets the boundary of the Lot Benefited.

Breakthrough Panels means the removable panels erected at basement level at the southern boundary of the Easement Site forming a temporary barrier between the Site and the Lot Benefited.

Council means the Council of the City of Sydney and its successors.

Development Consent means any development consent or other planning approval over all or part of the Lot Benefited that is relied upon to authorise the use of the Lot Benefited.

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Plan:

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Easement means the easement in this Instrument and includes the conditions in relation to that easement.

Easement Management Plan means a plan prepared by the Owner of the Lot Burdened and approved by the Council which addresses the following issues:

- (a) design and operational details of the car park control system for the use of the Easement Site including:
 - (i) use and replacement of security access cards or equivalent to the owners and occupiers of the Lot Benefited;
 - (ii) signals for traffic flow;
 - (iii) 24-hour emergency contact details; and
 - (iv) other security measures;
- (b) details of signage to be installed in the Easement Site to direct vehicles to the various areas serviced by the Easement;
- (c) the proposed method of managing possible traffic conflicts within the Easement Site; and
- (d) the proposed method of formulating and adopting rules for the use of the Easement by owners and occupiers of both the Lot Benefited and the Lot Burdened and any other Authorised Users.

Easement Site means, in relation to the Easement in this Instrument:

- (a) the site of the Easement on the Plan, including any limitations by height or depth; and
- (b) all items within the site of the Easement identified on the Plan which are the subject of the Easement.

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Plan: **Plan of Easement for right of carriageway
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Emergency Situation means any circumstance involving a need, for reasons of safety, for evacuation or egress from a building or other place, including fire, earthquake, flooding, terrorist activity and any training or test of such evacuation or egress.

Instrument means this instrument under section 88B of the *Conveyancing Act 1919* (NSW).

Liability means actions, claims, demands, damages, losses, costs, expenses and other liabilities (whether in contract, tort (including negligence) or otherwise).

Lot 1 means Lot 1 in DP 537286.

Lot Benefited means the land referred to in Part 1 of this Instrument as being the land benefited by the Easement, or any part of it.

Lot Burdened means the land referred to in Part 1 of this Instrument as being the land burdened by the Easement, or any part of it.

Owner of Lot 1 means every person who is at any time entitled to an estate or interest in Lot 1, including any freehold or leasehold estate or interest in possession in Lot 1 each part of it.

Owner of the Lot Benefited means every person who is at any time entitled to an estate or interest in the Lot Benefited, including any freehold or leasehold estate or interest in possession in the Lot Benefited and each part of the Lot Benefited.

Owner of the Lot Burdened means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.

Plan means the plan of proposed subdivision of Lot 1 DP 220830 and Lot 1 DP 217877 dated 19 March 2012 (Issue 8) prepared by Mark Andrew (Surveyor) registered together with this Instrument.

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Planning Agreement means the planning agreement dated [#] between the Developer and the Council entered into pursuant to subdivision 2 of Division 6 of Part 4 of the Act.

Routine Repair and Maintenance means:

- (a) maintenance and repair of the surface of the right of carriageway (including linemarking), lighting and directional signage; and
- (b) weekly cleaning of the Easement Site (including rubbish removal), quarterly wash down of the surface of the right of carriageway and quarterly service of the security door at the Pitt Street entrance to the Easement Site.

Rugby Club Building means the existing Rugby Club building, as at the date of this Instrument, on the land comprised in folio identifier 180/606866.

Site means the land known as 1 Alfred Street, Sydney and comprising folio identifiers 1/220830 and 1/217877.

VCML means Valad Commercial Management Limited (ACN 101 802 046).

1.2 Interpretation

- (a) The singular includes the plural and the plural includes the singular.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument.
- (e) Unless stated otherwise, one provision does not limit the effect of another provision.

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Plan:

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- (f) A reference to any law or to any provision of any law includes any modification or re-enactment of it, any legislative provisions substituted for it and all regulations and statutory instruments issued under it or them.
- (g) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (h) Headings in this Instrument are for information purposes only and do not affect the interpretation of this Instrument.
- (i) A reference to a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person.
- (j) An agreement on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally.
- (k) **Includes** means includes but without limitation.

1.3 Conditions

Each of the provisions of this Easement will constitute and be covenants and agreements by and between the Owner of the Lot Burdened and the Owner of the Lot Benefited and, in relation to the positive covenant, the Council for themselves and their respective successors, assigns and transferees with the intention and agreement that the benefit and burden of such covenants and agreements will pass with the benefit and burden of the Easement.

1.4 No fetter

- (a) Nothing in this Instrument in any way restricts or otherwise affects the unfettered discretion of the Council in the exercise of its statutory powers as a public authority.
- (b) If any conflict arises between the unfettered discretion of the Council in the exercise of its powers as a statutory authority and the performance of any right or obligation in this Instrument, the former prevails.

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Plan:

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Sydney NSW 2000

1.5 Limitation of Trustee's Capacity and Liability

- (a) This clause applies to this Instrument for so long as (and to the extent that) VCML is the trustee of the Valad Fields Trust (Trust) and the Lot Burdened forms part of the assets of the Trust.
- (b) VCML enters into this Instrument in its capacity as trustee of the Trust and not in its personal capacity.
- (c) The liability of VCML to the other parties under or arising out of or in connection with this Instrument is limited to and can only be enforced against VCML to the extent to which it can be satisfied from the assets of the Trust. This clause does not apply to the extent to which there is a reduction in the right of indemnification out of the assets of the Trust of VCML due to fraud or wilful default by VCML or its breach of duty, breach of trust or negligence. VCML warrants to the other parties that it holds the benefit of a right of indemnification out of the assets of the Trust to the extent provided for in the Trust deed.
- (d) The other parties have no right to an indemnity from the members of the Trust against any liability or obligations of VCML to the other parties.
- (e) Subject to paragraph 1.5(a), this clause 1.5 applies despite any other provision of this Instrument and extends to all liabilities and obligations of VCML to the other parties under this Instrument.

1.6 GST

- (a) In this clause 1.6:
 - (i) **GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
 - (ii) terms used in this clause which are not defined in this Instrument, but which are defined in the GST Law, have the meanings given in the GST Law.

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- (b) Unless otherwise stated in this Instrument, amounts payable, and consideration to be provided, under any other provision of this document exclude GST.
- (c) If GST is payable on a supply made in connection with this Instrument, the recipient must pay the party making the supply (supplier) an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice to the recipient.
- (d) If an adjustment event arises in connection with a supply made in connection with this Instrument:
 - (i) the supplier must recalculate the GST payable to reflect the adjustment event;
 - (ii) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
 - (iii) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (e) If a payment to a party under this Instrument is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, the payment will be:
 - (i) reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense; and
 - (ii) then, increased by an amount equal to the GST payable if and to the extent that the payment is consideration for a taxable supply.

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2 Terms of Right of Carriageway numbered 1 above

2.1 Terms of the Easement

Subject to clauses 2.2 to 2.7 and the removal of the Breakthrough Panel in accordance with clause 3.2, the Owner of the Lot Burdened grants to the Owner of the Lot Benefited and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times with all types of vehicles for which the carriageway is designed for the purpose of accessing and servicing the Lot Benefited through the Breakthrough and to do anything reasonably necessary for that purpose.

2.2 Restriction on use for construction

Despite any other provision of this Instrument, the Easement Site cannot be used for vehicular access (or otherwise) to the Lot Benefited for the purposes of carrying out any demolition, excavation or construction works on the Lot Benefited.

2.3 Conditions of access

- (a) The Owner of the Lot Burdened:
- (i) must not use the Easement Site in such a way as to obstruct or unreasonably interfere with the use and enjoyment of the Easement Site by the Owner of the Lot Benefited, including ensuring that the area of the Easement Site immediately adjoining the Breakthrough is kept clear at all times; and
 - (ii) may not install security measures at the entrance to the Easement Site from Pitt Street unless:
 - (A) appropriate keys, security card-keys or other access authorities are provided to the Owner of the Lot Benefited and its Authorised Users on request;
 - (B) the security measures are operational 24-hours a day; and

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- (C) a 24-hour emergency call service is available in case of failure of the security measures to operate as designed.
- (b) The Owner of the Lot Benefited and its Authorised Users:
- (i) must not unreasonably interfere with the enjoyment of the Easement Site by the Owner of the Lot Burdened;
 - (ii) promptly reimburse to the Owner of the Lot Burdened the costs incurred by the Owner of the Lot Burdened in restoring any damage to the improvements erected within the Easement Site caused by the negligent or improper use of the Easement Site by the Owner of the Lot Benefited or its Authorised Users, which amount shall be a liquidated debt owed by the Owner of the Lot Benefited to the Owner of the Lot Burdened.
 - (iii) must comply with any reasonable directions of the Owner of the Lot Burdened in relation to the safe and orderly use of the Easement Site; and
 - (iv) must cause as little disturbance or damage as possible to the Easement Site.
- (c) If a breakthrough at basement level is constructed at any time on or to the Lot Benefited so as to provide for the servicing of the Rugby Club Building through the Lot Benefited pursuant to any condition of any Development Consent requiring the Owner of the Lot Benefited to provide such a breakthrough, the Owner of the Lot Benefited:
- (i) may grant rights to the owner or occupiers of the Rugby Club Building for service vehicles to access the Rugby Club Building from Pitt Street through the Easement Site and the Lot Benefited, so long as the Rugby Club Building is not redeveloped in conjunction with or part of land other than the land comprised in folio identifier 180/606866; and

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- (ii) must provide written notification to the Owner of the Lot Burdened and Council when such rights are granted, including providing a copy of any document creating such rights.

2.4 **No parking**

Neither the Owner of the Lot Burdened nor the Owner of the Lot Benefited may authorise any person to park a vehicle on the Easement Site at any time.

2.5 **Works to Lot Burdened**

Subject to compliance with the requirements of clause 2.6 , the Owner of the Lot Burdened may carry out works of any nature on or about the Lot Burdened, including without limitation, constructing, installing, removing, redeveloping or otherwise changing improvements on or about the Easement Site.

2.6 **Restrictions on access**

The Owner of the Lot Burdened may temporarily restrict access through part (but not all of) the Easement Site for the purpose of, or as a result of:

- (a) the construction, repair or maintenance of any improvement on the Site; or
- (b) carrying out obligations under paragraph 3.1 or any other obligation under this Instrument,

provided that:

- (c) such restriction is for a period not exceeding one month or such other period of time as agreed by the Owner of the Lot Benefited; and
- (d) the Owner of the Lot Burdened:
 - (i) obtains the prior written consent of the Owner of the Lot Benefited and complies with any conditions imposed on that consent; and
 - (ii) gives at least one months' written notice to the Owner of the Lot Benefited prior to works commencing;

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- (iii) takes all reasonable steps to:
- (A) minimise noise, dust, air pollution and disruption to access to the Easement Site by the Owner of the Lot Benefited and its Authorised Users;
 - (B) maintain security;
 - (C) maintain all services to and passing through Easement Site; and
 - (D) maintain access to the Lot Benefited.

2.7 Emergencies

The Owner of the Lot Burdened may restrict temporarily access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Owner of the Lot Benefited and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible.

2.8 Release

The Owner of the Lot Benefited and its Authorised Users use the Easement Site at their own risk and release the Owner of the Lot Burdened, its employees, agents and contractors (each an Indemnified Party) from all Liabilities arising out of or in connection with the use of the Easement Site by the Owner of the Lot Benefited and its Authorised Users except to the extent that that Liability arises from the default or negligent or wilful act or omission of an Indemnified Party.

2.9 Persons empowered to release, vary or modify the Right of Carriageway

This Right of Carriageway may only be released, varied or modified with the consent of each of the Council, the Owner of the Lot Burdened and the Owner of the Lot Benefited.

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3 Terms of Positive Covenant in relation to the Right of Carriageway numbered 1 on the Plan

3.1 Maintenance of Easement Site

The Owner of the Lot Burdened must:

- (a) at all times, repair and maintain, light and manage the Easement Site to a standard commensurate with an A-grade building and so as to ensure the safe and orderly use of the Easement;
- (b) not permit the Easement Site to fall into disrepair so that the use of the Easement Site becomes unsafe, impractical or impossible; and
- (c) keep the Easement Site clean and free from rubbish,

in accordance with the reasonable requirements of, and to the reasonable satisfaction of the Owner of the Lot Benefited.

3.2 Removal of Breakthrough Panel

- (a) The Owner of the Lot Burdened must remove the Breakthrough Panel (to the reasonable satisfaction of the Council) within 14 days of being notified by the Council or the Owner of Lot 1 of the date which is the later of the first issue of an interim or final occupation certificate for:

:

- (i) any development of Lot 1 which includes basement access corresponding to the location of the Breakthrough; and
- (ii) any part of the development of the Lot Burdened carried out in accordance with Development Application No. D/2010/2029.

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- (b) At or before the time of removing the Breakthrough Panel the Owner of the Lot Burdened must install in a good and workmanlike manner such fire doors as may be required to comply with fire safety regulations in force at that time.

3.3 **Emergency Vehicles**

Despite any other provision of this Instrument the Owner of the Lot Burdened:

- (a) must allow the Easement Site to be used for access by all emergency and other essential service organisations; and
- (b) must not interfere with such access.

3.4 **Easement Management Plan**

- (a) The Owner of the Lot Burdened must prepare an Easement Management Plan within [6] months of receipt of notice from the Owner of the Lot Benefited that the Lot Benefited has obtained a Development Consent for development that has basement access corresponding with the location of the Breakthrough.
- (b) Council may review the effectiveness of the Easement Management Plan and require it to be amended, but no more than twice in any 12 month period.

3.5 **Insurance**

- (a) Each of the Owner of the Lot Burdened and the Owner of the Lot Benefited must take out and maintain:
 - (i) a public liability insurance policy with respect to any Liabilities to any person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million; and

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- (ii) industrial special risks insurance in respect of its improvements and operations on the Easement Site for their full replacement value.
- (b) The policies referred to in paragraphs 3.5(a) must:
 - (i) note the other party as an interested party; and
 - (ii) be taken out and maintained with an insurer licensed by the Australian Prudential Regulation Authority to operate in Australia or have an investment grade security rating from an industry recognised rating agency such as Standard and Poors, Moodys or Bests.

3.6 **Persons empowered to release, vary or modify the Positive Covenant**

This Positive Covenant may only be released, varied or modified with the consent of each of the Council, the Owner of the Lot Benefited and the Owner of the Lot Burdened.

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PLAN FORM 6 WARNING: Creasing or folding will lead to rejection

ATTACHMENT G

<p>DEPOSITED PLAN ADMINISTRATION SHEET</p> <p style="text-align: center;">DRAFT PLAN PRINTED 19 MAR 2012 (ISSUE 8)</p> <p>Registered: * Title System: Purpose:</p> <p>PLAN OF PROPOSED SUBDIVISION OF LOT 1 D.P.220830 AND LOT 1 D.P.217877</p>	<p>SIGNATURES, SEALS and STATEMENTS of intention to dedicate public roads, to create public reserves, drainage reserves, easements, restrictions on the use of land or positive covenants.</p> <p>PURSUANT TO SEC. 88B OF THE CONVEYANCING ACT 1919 IT IS INTENDED TO CREATE:</p> <p>(1) - RIGHT OF PUBLIC ACCESS 6 WIDE AND VARIABLE (LIMITED IN STRATUM) (A)</p> <p>(2) - RIGHT OF FOOTWAY AND RECREATION (LIMITED IN STRATUM) (B)</p> <p>(3) - RIGHT OF CARRIAGEWAY (LIMITED IN STRATUM) (C)</p> <p>ITS IS INTENDED TO DEDICATE THE AREA SHOWN AS "PROPOSED ROAD" TO THE PUBLIC AS ROAD.</p> <p style="text-align: center;">Use PLAN FORM 6A</p> <p>for additional certificates, signatures, seals and statements</p> <p>Crown Lands NSW/Western Lands Office Approval</p> <p>I,in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given</p> <p>(Authoriser Officer) Signature:..... Date:..... File Number:..... Office:.....</p> <p style="text-align: center;">Subdivision Certificate</p> <p>I certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to:</p> <p>the proposed..... set out herein (insert 'subdivision' or 'new road')</p> <p>* Authorised Person/General Manager/Accredited Certifier</p> <p>Consent Authority:..... Date of Endorsement:..... Accreditation no:..... Subdivision Certificate no:..... File no:.....</p> <p>* Delete whichever is inapplicable.</p>
<p>LGA: CITY OF SYDNEY Locality: SYDNEY Parish: ALEXANDRIA County: CUMBERLAND</p> <p>Surveying and Spatial Information Regulation, 2006</p> <p>I, MARK ANDREW of DENNY LINKER & Co., Level 5, 17 RANDLE ST, SURRY HILLS, 2010 a surveyor registered under the Surveying and Spatial Information Act, 2002, certify that the survey represented in this plan is accurate, has been made in accordance with the Surveying and Spatial Information Regulation, 2006 and was completed on:.....</p> <p>The survey relates to LOT 11</p> <p>(specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey)</p> <p>Signature....., Dated:..... Surveyor registered under the Surveying and Spatial Information Act, 2002</p> <p>Datum Line:..... Type: Urban/Rural:.....</p> <p>Plans used in the preparation of survey/compilation</p>	<p>(If insufficient space use Plan Form 6A annexure sheet)</p> <p>SURVEYORS REFERENCE: 100319 CONSOL</p>

PLAN OF PROPOSED SUBDIVISION OF LOT
1 D.P.220830 AND LOT 1 D.P.217877

DRAFT PLAN
PRINTED 19 MAR 2012
(ISSUE 8)

Registered:

Subdivision Certificate No.:

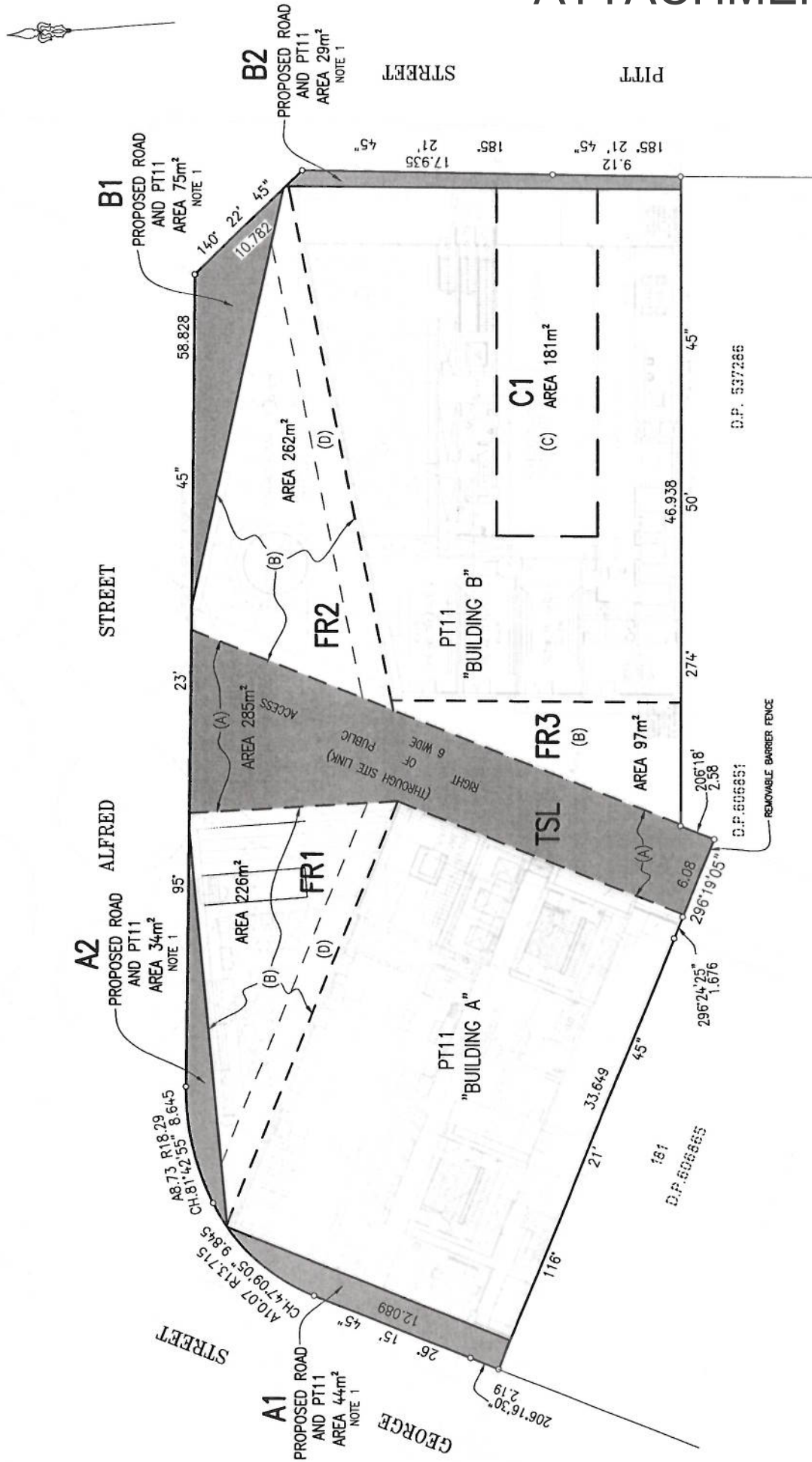
Date of Endorsement:

* OFFICE USE ONLY

ATTACHMENT G

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GROUND LEVEL



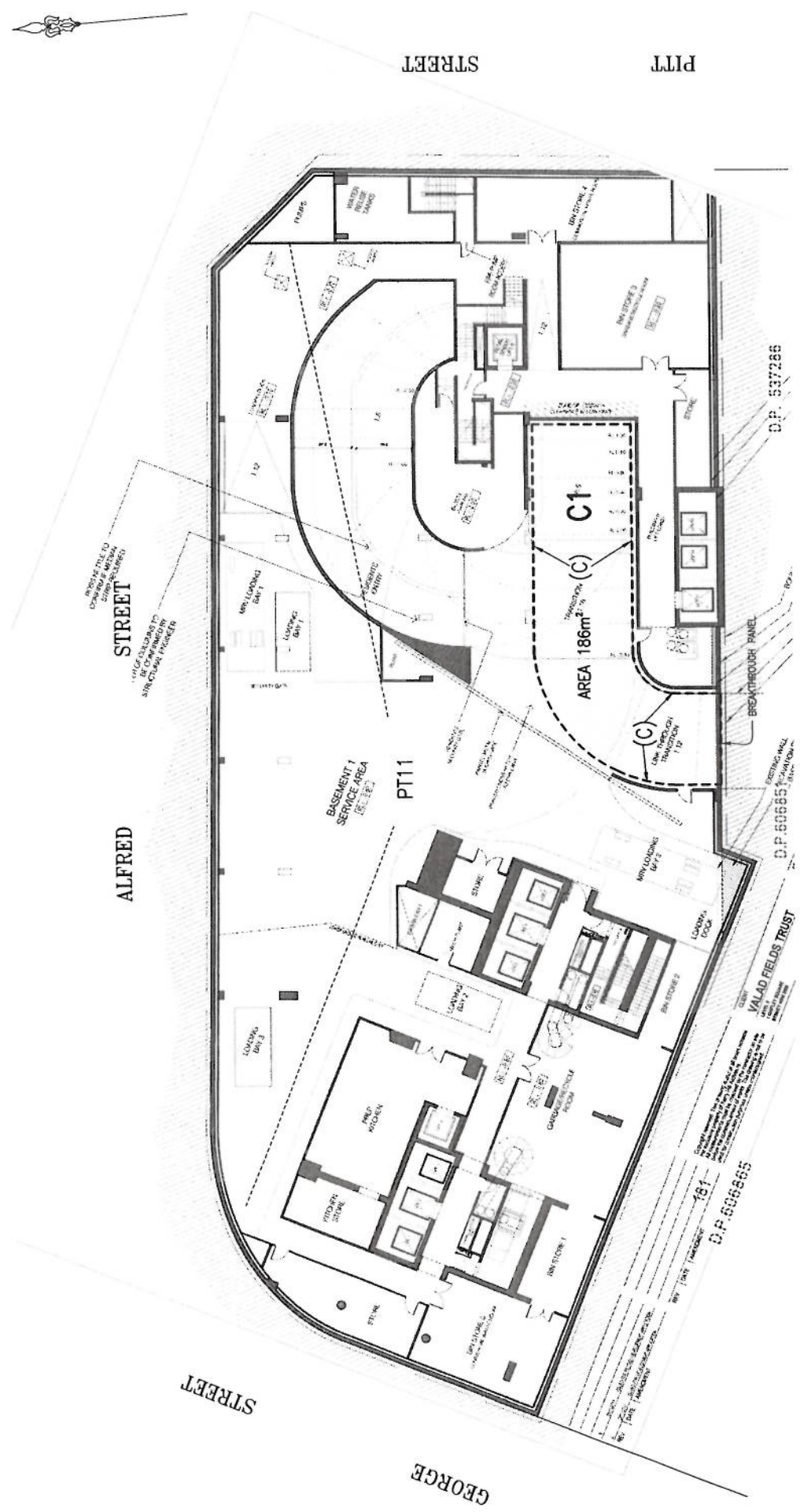
NOTE: AREAS SHOWN ARE SUBJECT TO FINAL SURVEY AND DESIGN

NOTE 1:
 PROPOSED ROAD WIDENING LIMITED IN DEPTH TO RL'S AT TOP OF CARPARK STRUCTURE AND MEMBRANE BELOW AND UNLIMITED IN HEIGHT
 (A) - RIGHT OF PUBLIC ACCESS 6 WIDE AND VARIABLE LIMITED IN DEPTH TO THE TOP OF THE CARPARK STRUCTURE AND MEMBRANE BELOW AND LIMITED IN HEIGHT TO UNDERSIDE OF THE STRUCTURES ABOVE
 (B) - RIGHT OF FOOTWAY AND RECREATION LIMITED IN DEPTH TO THE RL'S AT SURFACE OF PAVERS (EXCEPT AREA SHOWN AS FR3 WHICH WILL BE LIMITED IN DEPTH TO THE TOP OF THE CARPARK STRUCTURE AND MEMBRANE BELOW) AND LIMITED IN HEIGHT TO UNDERSIDE OF THE STRUCTURES ABOVE
 (C) - RIGHT OF CARRIAGEWAY LIMITED IN DEPTH TO DRIVEWAY LEVELS AND LIMITED IN HEIGHT TO 4 METRES ABOVE THE DRIVEWAY SURFACE
 (D) - THAT PART OF EASEMENT (B) TO BE LEFT CLEAR FOR PEDESTRIAN ACCESS

Surveyor: MARK ANDREW Date of Survey: 02/12/2011 Surveyor's Ref: 100319	PLAN OF PROPOSED SUBDIVISION OF LOT 1 D.P.220830 AND LOT 1 D.P.217877	LG: CITY OF SYDNEY Locality: SYDNEY Subdivision No: X:\100319\100319-ALFRED-STY100319-THROUGH SITE LINK & LAND DEDICATED TO COUNCIL.DWG	REGISTERED CITY OF SYDNEY SYDNEY Subdivision No: X:\100319\100319-ALFRED-STY100319-THROUGH SITE LINK & LAND DEDICATED TO COUNCIL.DWG Lengths are in metres. Reduction Ratio 1:200	DRAFT PLAN PRINTED 19 MAR 2012 (ISSUE 8)
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BASEMENT LEVEL



NOTE: AREAS SHOWN ARE SUBJECT TO FINAL SURVEY AND DESIGN

<p>DRAFT PLAN PRINTED 19 MAR 2012 (ISSUE 8)</p>	<p>REGISTERED</p>	<p>CITY OF SYDNEY SYDNEY</p>	<p>PLAN OF PROPOSED SUBDIVISION OF LOT 1 D.P. 220830 AND LOT 1 D.P. 217877</p>	<p>Surveyor: MARK ANDREW Date of Survey: 02/12/2011 Surveyor's Ref: 100319</p>	<p>LGA: Sydney Locality: Sydney Subdivision No: 100319 Lengths are in metres. Reduction Ratio 1: 200</p>
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(C) - RIGHT OF CARRIAGEWAY LIMITED IN DEPTH TO DRIVEWAY LEVELS AND LIMITED IN HEIGHT TO 4 METRES ABOVE THE DRIVEWAY SURFACE