

**ATTACHMENT D**

**VOLUNTARY PLANNING AGREEMENT**

**188-194A AND 196-208 GEORGE STREET  
4 DALLEY STREET AND 1 UNDERWOOD  
STREET SYDNEY**

## **PLANNING AGREEMENT**

**188- 208 GEORGE STREET, 4 DALLEY STREET and 1 UNDERWOOD STREET SYDNEY**

BETWEEN

**THE COUNCIL OF THE CITY OF SYDNEY**

**AND**

**MIRVAC PROJECTS PTY LTD  
(ACN 001 069 245)**

**MIRVAC GEORGE STREET PTY LIMITED (ACN  
098 668 896)**

**MIRVAC FUNDS LIMITED (ACN 002 561 640)**

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

# ATTACHMENT D

## 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.     **MIRVAC PROJECTS PTY LTD (ACN 001 069 245)** whose registered office is situated at Level 26, 60 Margaret Street, Sydney NSW 2000 (**Developer**)
3.     **MIRVAC GEORGE STREET PTY LIMITED (ACN 098 668 896)** whose registered office is Level 26, 60 Margaret Street, Sydney NSW 2000 in its capacity as trustee of the George Street Trust (ABN 87 855 852 129) and **MIRVAC FUNDS LIMITED (ACN 002 561 640)** whose registered office is Level 26, 60 Margaret Street, Sydney NSW 2000 acting as responsible entity for Mirvac Property Trust (ABN 29 769 181 534) (collectively referred to as the **Landowners**)

### BACKGROUND

- A.     The Developer has lodged the Development Application with the Council to carry out the Development on the Land.
- B.     The Landowners are the owners of the Land.
- C.     This document constitutes an agreement between the Developer, the Landowners and the Council that the Developer or the Landowners (as applicable) will pay monetary contributions, or provide other material public benefits, or a combination of them, in connection with the Development Application on the terms and conditions of this agreement.

### OPERATIVE PROVISIONS

#### 1     **PLANNING AGREEMENT UNDER THE ACT**

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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**

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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;

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- (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, 94A and 94EF of the Act, and conditions may be imposed in respect of the contributions identified in (a) to (d) (inclusive).

### 3 OPERATION OF THIS AGREEMENT

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This agreement takes effect only if:

- (a) the agreement is executed by all of the parties; and
- (b) a Development Consent is issued subject to a condition imposed under section 93I(3) of the Act requiring a planning agreement to be entered into.

### 4 DEFINITIONS AND INTERPRETATION

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#### 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.

**Adjustment Date** means each 30 June every year after the date of this agreement.

**Attributed Value** means the value set out in Schedule 3 as modified in accordance with this agreement.

**Bond** means a documentary performance bond which must be denominated in Australian dollars and be an unconditional undertaking with all the following requirements. It must:

- (a) Be signed and issued by an Australian Prudential Regulation Authority [APRA] regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia;
- (b) Have at all times an investment grade security rating from an industry recognised rating agency of at least:
  - (i) BBB + [Standard & Poors and Fitch]; or
  - (ii) Baa 1 [Moody's]; or
  - (iii) bbb [Bests].

- (c) Be issued on behalf of the Landowner and the Developer;
- (d) Have no expiry or end date;
- (e) Have the beneficiary as the Council;
- (f) Be irrevocable;
- (g) State either individually, or in total with other lodged compliant forms of Guarantee, the relevant minimum amount required to be lodged as security; and
- (h) State the purpose of the deposit required in accordance with this agreement.

**Carriageway Land** means that part of the Land as shown marked as "D" on the Plan and limited in height and depth in accordance with 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.

**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 10.6, 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 8.5.

**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.

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**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 or assigning or novating the Developer's rights or obligations as the case may be.

**Dedicated Land** means the land specified in Item 6 of Schedule 1 to be dedicated to the Council free of cost in accordance with this agreement.

**Defect** means any error, omission, shrinkage, blemish in appearance or other fault in the Developer's Works caused by the Developer, its employees, agents or contractors which prevents the Developer's Works from being reasonably capable of being used for their intended purpose but excludes any damage caused to the Developer's Works by a third party.

**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 any 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 supplemented) submitted to the consent authority before the determination of that development application.

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

**Developer's Contribution** means the sum of the Monetary Contribution, Dedicated Land or other Public Benefits and any combination of a Monetary Contribution, Encumbered Land, 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.

**George Street Footway Widening** means the part of the Land as shown on the Plan and marked "B1" and "B2" and limited in height and depth in accordance with the Plan.

**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 a Bond or one or more unconditional bank guarantees, unlimited in time, issued by a bank licensed to carry on business in Australia that is;

- (a) 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.

**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 Roads** means the part of the Land as shown on the Plan and marked "Road" and limited in height and depth in accordance with the Plan.

**Public Plaza** means the part of the Land as shown on the Plan and marked "PT2".

**Land for Public Access** means the part of the Land marked "A" on the Plan and limited in height and depth in accordance with the Plan and being a minimum of 4.5 metres wide and 8.0 metres high, other than for the intrusion from the pedestrian link bridge (which will link the mezzanine level plant area to the lift core) and the George Street footpath awning, both being subject to any Development Consent.

**Land for Public Footway and Recreation** means the Widened Crane Place, George Street Footway Widening and Carriageway Land.

**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.

**LPI** means the Land and Property Information Division of the NSW Department of Finance and Services.

**Monetary Contribution** means the amount set out in item 5 of Schedule 1 to be paid by the Developer to Council in accordance with this agreement.

**Month** means a calendar month.

**Occupation Certificate** has the same meaning as in the Act and includes an interim Occupation Certificate.

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

**Plan** means the draft plan of proposed subdivision of the Land printed on 4 October 2012 (Issue 4) as prepared by Mark John 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 Land 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 instrument and terms of easement to be created over the Land for Public Access under this agreement 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 instrument and terms of 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.

**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 any 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.

**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 any 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 any 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 any 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

**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.

**Widened Crane Place** means the part of the Land as shown on the Plan and marked "C" and limited in height and depth in accordance with 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.

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- (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.

### 5 DEDICATED LAND AND GRANT OF EASEMENTS

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- 5.1 The Landowners must dedicate or transfer the Dedicated Land 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 any easements reasonably required by the Council for services) and at no cost to Council.
- 5.2 The Landowners must create a right of public access over the Land for Public Access, 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.
- 5.3 The Landowners 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.
- 5.4 The Landowners must create a right of carriageway over the Carriageway Land on terms generally in accordance with the Proposed Instrument - Right of Carriageway by the date or time specified in Item 5 of Schedule 2.
- 5.5 The Landowners must comply with any reasonable 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.
- 5.6 The Parties agree that:
  - (a) the final dimensions of the Encumbered Land and Dedicated Land are subject to any final Development Consent and survey; and
  - (b) the Easement Instruments are not in registrable form and amendments may be agreed between the Parties that do not substantially affect the

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Easements Instruments but are required or considered appropriate to enable the Easement Instruments to be registered; and

- (c) prior to registration of the Easement Instruments pursuant to this agreement, the parties may agree to consolidate the terms of the Easement Instruments into one or more instruments for registration with one or more plans of subdivision of the Land.

### 6 MONETARY CONTRIBUTIONS

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- 6.1 Subject to this clause, the Developer must pay the Monetary Contribution to Council by the dates or times specified in item 4 of Schedule 2.
- 6.2 The Council must expend, use and apply the Monetary Contribution, as soon as it is reasonably practicable to do so, for public domain improvements within the vicinity of the Land including, where appropriate, the upgrading of Dalley Street.

- 6.3 (a) Any Monetary Contribution required under this agreement is to be indexed as follows:

Contribution (to be provided) = Contribution (as stated in this agreement) x  $\frac{\text{CPI 2}}{\text{CPI 1}}$

If  $\frac{\text{CPI 2}}{\text{CPI 1}} < 1$ , then  $\frac{\text{CPI 2}}{\text{CPI 1}} = 1$

and where:

CPI 1 is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics at the date that this agreement becomes effective in accordance with clause 3; and

CPI 2 is the Consumer Price Index: All Groups Index for Sydney available from the Australian Bureau of Statistics and applicable for the quarter at the date of the payment of the Monetary Contribution.

- (b) The Parties acknowledge and agree that nothing in this agreement will be read or construed as generating an obligation upon the Council to pay the Landowner or the Developer.

### 7 NOT USED

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### 8 APPROVAL OF DEVELOPER'S WORKS

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#### 8.1 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 have 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 3;
- (d) to take into account a modification to any Development Consent made and approved under s.96 of the Act or any other development consent granted in respect of the Developer's Works;
- (e) to take into account the Attributed Value of the Developer's Works in Item B of Schedule 3; and
- (f) to accommodate the policies, procedures and standards identified in Schedules 3 or 4 in accordance with the reasonable requirements of the Council.

## **8.2 Developer to Prepare and Submit**

- (a) 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 and 4, and submit it to Council for approval no later than three months (or such other time as the parties may agree) prior to the date that the Developer makes an application for the relevant Construction Certificate for the Developer's Works.
- (b) The Council's approval referred to in paragraph (a) of this clause 8.2 is not to be unreasonably withheld.

## **8.3 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 8.2(a) are satisfactory. If the design or description are not satisfactory having regard to Schedules 3 and 4, 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 and 4. The Developer must promptly amend the proposed design to take into account the comments made by the Council under this clause. The Council must act reasonably in relation to this clause.

## **8.4 If the Developer does not Prepare Plans for the Developer's Works**

- (a) If the Developer:
  - (i) does not prepare plans in accordance with clause 8.2(a) 8.2; or

- (ii) does not within 3 months of the issue of those comments under clause 8.3, amend the plans to take into account the comments made by Council so that the Developer's Works comply with Schedules 3 and 4,

then, subject to clause 8.4(b), the Council may make an appropriation from the Guarantee for the purposes of carrying out works of the kind contemplated by this agreement and generally identified in Schedule 3.

- (b) Before exercising the right conferred in clause 8.4(a) the Council must:
  - (i) give notice to the Developer to rectify the non-compliance with clauses 8.2, 8.3 and 8.4(a)(ii) within 10 business days of the non-compliance; and
  - (ii) allow the Developer to rectify the non-compliance with clauses 8.2, 8.3 and 8.4(a)(ii) within 20 business days of receipt of the notice referred to in clause 8.4(b)(i).
- (c) If the Council makes an appropriation under this clause 8.4, the Landowners grant the Council a licence for such period as is necessary for the Council to carry out, or procure the carrying out, of the Developer's Works.

#### **8.5 Valuation of Proposed Developer's Works**

The Developer must, on or before the submission of plans under clause 8.2, 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, acting reasonably, 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 8.

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.

#### **8.6 Reduction in scope**

- (a) Subject to subclause (b), 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.

- (b) If the design and construction of the Developer's Works in Item B of Schedule 3 exceed the Attributed Value, then the scope of that aspect of the Developer's Works is allowed to be reduced in a manner agreed with Council so as to ensure the total cost will not exceed the Attributed Value.

## **9 FINAL DESIGN OF THE DEVELOPER'S WORKS**

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### **9.1 Preparation of the Plans and Specifications**

The Developer must complete construction drawings in accordance with the design developed and approved by Council under clause 8.

### **9.2 Approval or variation by the Council**

The Council, acting reasonably, 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:

- (a) The documents or standards (as the case may be) set out in Schedule 4;
- (b) A deviation or discrepancy from the plans approved under clause 8;
- (c) Any standards, or specifications for the material selection or methodology, adopted by Council from time to time, provided that any direction given under this paragraph (c) does not significantly increase:
  - (i) the cost of that element of the Developer's Works; or
  - (ii) the complexity of implementation in a manner which may lead to significant delay in the completion of the balance of the work approved under any relevant Development Consent.

### **9.3 Directions by the Council**

Within 14 days of receiving a notice from Council under the terms of clause 9.2, the Developer must :

- (a) to the extent practicable and using reasonable endeavours, comply with any direction in respect of the design and implementation of the Developer's Works; or
- (b) if the determination is considered to be unreasonable, or impracticable, notify a dispute with that determination in accordance with clause 15 of this agreement.

**10 CONSTRUCTION OF DEVELOPER'S WORKS**

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**10.1 Insurance**

The Developer must:

- (a) maintain public liability insurance, with an insurer approved by the Council acting reasonably, 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 10.1(a) and 10.1(b) until the expiration of the Defects Liability Period.

**10.2 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 (other than any Development Consent).

**10.3 Construction Work**

The Developer must (at its cost):

- (a) carry out and complete the Developer's Works in accordance with 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. Subject to clause 8.6(b), 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.

#### **10.4 Inspection of Works**

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

- (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.

#### **10.5 Works Completion**

When, in the opinion of the Developer, the Developer's Works have reached completion, the Developer must notify the Council 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 has reached completion; and
- (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.

#### **10.6 Final Inspection by Council**

The Council must inspect the Developer's Works within 7 days of notification under clause 10.5 and must by notice to the Developer either:

- (a) state that Completion has been achieved; or



- (b) state that Completion has not been achieved and (if so, 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 10.8.

Nothing in this clause 10.6, or in any notice issued under this clause 10.6, 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.

### **10.7 Date of Completion of Developer's Works**

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

### **10.8 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 any Development Consent or this agreement, then Council in its discretion may either:
  - (i) complete the Developer's Works; or
  - (ii) modify the Public Benefits to reasonably achieve the objectives identified in this agreement or any 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.

- (d) If the Council determines to complete the Developer's Works under this clause 10.8, the Landowners grant the Council a licence for such period as is necessary for the Council to carry out, or procure the carrying out, of the Developer's Works.

### **10.9 Indemnity by the Developer and Landowners**

The Developer and Landowners indemnify 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 the Landowners (or any person engaged by them, including any contractor) in connection with the performance of the Developer's and the Landowners' obligations under the terms of this agreement, 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).

## **11 DEFECTS LIABILITY PERIOD**

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### **11.1 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, within a reasonable period (having regard to the nature of the Defect).

### **11.2 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 11.

### **11.3 Application of Security**

If the Developer does not rectify any Defect in the Developer's Works duly notified under clause 11.1 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 11.2 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.
- (d) If the Council determines to rectify any Defects in the Developer's Works under this clause 11.3, the Landowners grant the Council a licence for such period as is necessary for the Council to carry out, or procure the carrying out, of those rectification works.

## **12 SECURITY**

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### **12.1 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 Amount relates as specified in Item 9 of Schedule 1 may commence.

## 12.2 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 or upon completion of all 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 must promptly, after receipt of any notice under paragraph (a) and assessment under paragraph (b) either:
  - (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 12.20, it must in exchange for a replacement Guarantee provided by the Developer that reflects the decision in clause 12.20, return to the Developer the existing Guarantee held by Council.

## 12.3 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 in accordance with clause 8.2, but only after clause 8.4(b) has been complied with by the Council;
  - (ii) the detailed designs for the balance of the Developer's Works are not finalised between the Parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;
  - (iii) the Developer's Works do not reach Completion within **60** months of the date of issue of the first Construction Certificate in respect of the Development; or
  - (iv) 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
  - (iii) carrying out any other works to achieve the Public Benefits as the Council considers appropriate.

#### 12.4 Right to Claim Not Affected

The Developer acknowledges and agrees that:

- (a) the Council may claim under the Guarantee, without further reference to the Developer, provided Council has first complied with all requirements under this agreement in respect of it doing so; 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.

#### 12.5 Adjustment of Guarantee Amount

- (a) On each Adjustment Date the Guarantee Amount is to be 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 RGA to apply from the relevant Adjustment Date within 20 business days of the 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 RGA no later than 14 days after receipt of a notice given under paragraph (b).

### **12.6 Release of Undertaking**

If upon the expiration of the Defects Liability Period:

- (a) the whole of the monies secured by the Guarantee has not been expended, and the monies accounted for in accordance with clause 12.2 and 12.3; and
- (b) the Council (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.

## **13 EXPENDITURE BY THE COUNCIL**

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### **13.1 Expenditure by the Council**

If the Council carries out the Developer's Works under sub-clause 12.3, 10.8 or 8.4, 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) acting reasonably, may expend more money than is secured by the Guarantee in order to deliver the Developer's Works.

### **13.2 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 13.1 or 11.3), 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.

**14 REGISTRATION OF THIS AGREEMENT**

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**14.1 Registration of this Agreement**

The Landowners must promptly:

- (a) obtain any necessary consents required in order to register this agreement on the title to the Land;
- (b) lodge the agreement for registration with the LPI before a construction certificate is issued that authorises the construction of any part of the development other than a construction certificate that may be limited to demolition works only;
- (c) following registration of the agreement, notify the Council of registration, enclosing a title search of the Land confirming the registration.

**14.2 Caveat**

- (a) Without limiting any other provision of this agreement, until such time as the registration of this agreement is completed, the Landowners agree 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 14.2(a), then the Council must immediately do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
  - (i) this agreement;
  - (ii) any plan of consolidation or subdivision contemplated, required or permitted under this agreement or any Development Consent;
  - (iii) any other dealing contemplated, required or permitted under this agreement or any Development Consent; and
  - (iv) the transfer of any part of the Land to a related body corporate of the Landowners or a trust or fund of which a related body corporate of the Landowners is trustee, manager or responsible entity.
- (c) 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.

**14.3 Removal of Agreement**

The Council must promptly execute any form and supply such other information as is reasonably required by the Landowners to enable the removal of this agreement from the titles to the Land if all of the Developer's and Landowners' obligations under this agreement have been satisfied with respect to that part of the Land in the opinion of the Council acting reasonably, and this agreement is

capable of being removed from the title to that part of the Land (ie it is a separate legal parcel).

## 15 DISPUTE RESOLUTION

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### 15.1 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 15.

### 15.2 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 other than by way of this clause 15;
- (b) the intention to invoke this clause 15;
- (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 15.2 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.

### 15.3 Principals of Parties to Meet

The principals of the parties (and in the case of the Council, the principal may include the person acting in the role of Chief Executive Officer (otherwise known as the General Manager within the meaning of the Local Government Act 1993, or such person as is nominated by that officer in writing) must promptly (and in any event 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.

**15.4 Neither Party May Constrain**

If:

- (a) at least one meeting has been held in accordance with clause 15.3; and
- (b) the parties have been unable to reach an outcome identified in 15.2(a) to 15.2(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 15.3;

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 15 does not of itself amount to a breach of this agreement.

**16 NOTICES**

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**16.1 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.

**16.2 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 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.

**16.3 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, OR
- (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.

**16.4 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.

## 17 APPROVALS AND CONSENT

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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.

## 18 ASSIGNMENT AND DEALINGS

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### 18.1 Developer's right to assign or novate

- (a) Prior to any proposed Dealing, the Developer must:
  - (i) satisfy the Council that the person to whom the Developer's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Developer's obligations under this agreement insofar as those obligations have been novated to the Incoming Party; and
  - (ii) procure the execution of an agreement by the Incoming Party with the Council on terms satisfactory to the Council under which the Incoming Party agrees to comply with the terms and conditions of this agreement as though the Incoming Party was the Developer.
- (b) The Developer will pay the Council's reasonable legal costs and expenses incurred under this clause 18.1.

### 18.2 Dealings with Land

- (a) Until such time as this agreement is registered in compliance with clause 14, the Landowner must not transfer to another person (**Transferee**) the whole or any part of the Land unless the Landowner:
  - (i) satisfies the Council that the proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Landowners under this agreement in respect of the part of the Land being transferred or satisfies the Council that the Landowner will continue to be bound by the terms of this agreement in respect of the part of the Land being transferred after the transfer has been effected; and
  - (ii) procure the execution of an agreement by the Transferee with the Council on terms satisfactory to the Council under which the Transferee agrees to comply with the terms and conditions of this agreement as though the Transferee was the Landowner.

- (b) Once this agreement is registered in compliance with clause 14, the Landowner must not transfer to another person (**Transferee**) the whole or any part of the Land unless the Landowner:
- (i) satisfies the Council that the proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Landowner under this agreement in respect of the part of the Land being transferred or satisfies the Council that the Landowner will continue to be bound by the terms of this agreement in respect of the part of the Land being transferred after the transfer has been effected; and
  - (ii) satisfies the Council that it is not in material breach of its obligations under this agreement.
- (c) The Landowner will pay the Council's reasonable legal costs and expenses incurred under this clause 18.2.

### 18.3 Substitution of Security

As soon as is practicable after the Developer or Landowners have any Dealings and the incoming party or Transferee provide a Guarantee in terms acceptable to the Council in accordance with this agreement, the Council must, if so directed by the Developer or Landowners (as the case may be), promptly release and return the Guarantee held at that time to the Developer or Landowners.

### 18.4 Internal transfers

- (a) This clause 18.4 applies notwithstanding any other provision in this agreement.
- (b) The Council acknowledges that the Landowners intend to carry out the following internal transfers on or before 21 December 2012:
  - (i) 50% of the following land parcels will be transferred to Mirvac Projects George Street Pty Limited as trustee for the Mirvac Projects George Street Trust:
    - (A) 190 George Street (auto consol 11042-157) from Mirvac George Street Pty Limited as trustee for the George Street Trust;
    - (B) 200 George Street (auto consol 12366-248) from Mirvac George Street Pty Limited as trustee for the George Street Trust;
    - (C) Underwood Lane (Folio Identifier 20/1063401) from Mirvac Funds Limited as responsible entity of Mirvac Property Trust;
    - (D) 4 Dalley Street (Folio Identifier 1/107759) from Mirvac Funds Limited as responsible entity of Mirvac Property Trust;

- (ii) 50% of Underwood Lane (Folio Identifier 20/1063401) from Mirvac Funds Limited as RE of Mirvac Property Trust to Mirvac George Street Pty Limited as trustee for the George Street Trust; and
  - (iii) 50% of 4 Dalley Street (Folio Identifier 1/107759) to Mirvac Projects Dalley Street Pty Limited as trustee of the Mirvac Projects Dalley Street Trust.
- (c) The Landowners must ensure that each of:
- (i) Mirvac Projects George Street Pty Limited as trustee for the Mirvac Projects George Street Trust; and
  - (ii) Mirvac Projects Dalley Street Pty Limited as trustee of the Mirvac Projects Dalley Street Trust,
- executes a Deed of Accession in a form agreed between the Parties and delivers it to Council within 2 business days of the transfers referred to in clause 18.4(b) occurring.
- (d) Subject to the Landowners complying with clause 18.4(c), the Council consents to the transfers referred to in clause 18.4(b).

## 19 COSTS

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### 19.1 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) any reasonable costs of notifying this agreement under section 93G of the Act;
- (c) the giving effect to this agreement; and
- (d) any enforcement of the rights under this agreement.

### 19.2 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.

## 20 ENTIRE AGREEMENT

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This agreement contains everything to which the Parties has 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.

**21 FURTHER ACTS**

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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.

**22 GOVERNING LAW AND JURISDICTION**

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

**23 JOINT AND SEVERAL LIABILITY**

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

**24 NO FETTER**

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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.

**25 REPRESENTATIONS AND WARRANTIES**

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

**26 SEVERABILITY**

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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.

**27 MODIFICATION**

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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.

**28 WAIVER**

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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.

**29 GST**

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- 29.1** In this clause terms used has 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").
- 29.2** Subject to the remainder of this clause 29, 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.
- 29.3** 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.
- 29.4** 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.
- 29.5** 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.
- 29.6** Subject to the operation of this clause, and unless otherwise expressly stated amounts in this agreement are GST exclusive.

**30 ENFORCEMENT PROVISIONS**

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**30.1 Easement Instruments**

- (a) Subject to clause 30.1(b), if the Landowners do not comply with clause 5.2, 5.3 or 5.4 (as the case may be) then by agreement between the Parties, and without limiting any other remedies available to Council, Council may compulsorily acquire an easement in the terms of the relevant Easement Instrument over the whole or any part of the Land where the Easement Instrument has not been created in compliance with clause 5.2, 5.3 or 5.4 (as the case may be) in accordance with the Just Terms Act for the amount of \$1.00 (for each Easement Instrument).
- (b) Before exercising the right conferred in clause 30.1(a), Council must:

- (i) give written notice to the Landowners to rectify the non-compliance with clause 5.2 within 40 business days of receipt of the written notice; and
  - (ii) allow the Landowners to rectify the non-compliance with clause 5.2 within 40 business days of receipt of the written notice referred to in clause 30.1(b).
- (c) The Landowners and Council agree that:
- (i) this clause 30.1 is an agreement between Council and the Landowners for the purposes of section 30 of the Just Terms Act; and
  - (ii) in this clause 30.1, Council and the Landowners have agreed on all relevant matters concerning the compulsory acquisition and compensation to be paid for the acquisition of the rights in accordance with the relevant Easement Instrument.
- (d) The Landowner indemnifies and agrees to keep indemnified the Council against all claims made against the Council:
- (i) if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person, other than the Landowner, and
  - (ii) as a result of any contamination that is required to be cleaned up by a Government authority over the whole or any part of the Land the subject of the Easement Instruments, but only in relation to contamination that existed on or before the date that the Easement Instruments are acquired by the Council.
- (e) The Landowner must reimburse the Council, promptly on demand, an amount equivalent to all reasonable legal costs incurred by the Council in acquiring the rights in accordance with the Easement Instruments under this clause.

### 30.2 Dedicated Land

- (a) Subject to clause 30.2(b), if the Landowners do not comply with clause 5.1, 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 Dedicated Land that has not been dedicated or transferred in compliance with clause 5.1 in accordance with the Just Terms Act for the amount of \$1.00.
- (b) Before exercising the right conferred in clause 30.2(a), Council must:
  - (i) give written notice to the Landowners to rectify the non-compliance with clause 5.1 within 40 business days of receipt of the written notice; and

- (ii) allow the Landowners to rectify the non-compliance with clause 5.1 within 40 business days of receipt of the written notice referred to in clause 30.2(b)(i).
- (c) The Landowners and Council agree that:
  - (i) this clause 30.2 is an agreement between Council and the Landowners for the purposes of section 30 of the Just Terms Act and
  - (ii) in this clause 30.2 Council and the Landowners have agreed on all relevant matters concerning the compulsory acquisition and compensation to be paid for the acquisition of the Dedicated Land.
- (d) The Landowner indemnifies and agrees to keep indemnified the Council against all claims made against the Council:
  - (i) if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any person, other than the Landowner, and
  - (ii) as a result of any contamination that is required to be cleaned up by a Government authority over the whole or any part of the Dedicated Land, but only in relation to contamination that existed on or before the date that the Dedicated Land is acquired by the
- (e) The Landowner must reimburse the Council, promptly on demand, an amount equivalent to all reasonable legal costs incurred by the Council in acquiring the Dedicated Land under this clause.

## 31 OBLIGATIONS IF A RELEVANT LEGAL CHALLENGE

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### 31.1 Obligations if a Relevant Legal Challenge

- (a) Notwithstanding anything else in this agreement, and subject to clause 31.1(b), the Council agrees that in the event that a Relevant Legal Challenge is commenced:
  - (i) the Landowners' obligation under this agreement to transfer or dedicate the Dedicated Land is suspended and the Council cannot require the Landowners to transfer or dedicate the Dedicated Land;
  - (ii) the consent provided under this agreement by the Landowners to the compulsory acquisition of the Dedicated Land is withdrawn, is of no effect and the Council cannot compulsorily acquire the Dedicated Land pursuant to this agreement;

- (iii) the Landowners' obligation under this agreement to enter into the Easement Instruments is suspended and the Council cannot require the Landowners to enter into the Easement Instruments;
  - (iv) the consent provided under this agreement by the Landowners to the compulsory acquisition of the Easement Instruments in clause 30 are withdrawn, is of no effect and the Council cannot compulsorily acquire the Easement Instruments; and
  - (v) the Developer's obligation under this agreement to undertake the Developer's Works is suspended.
- (b) Clause 31.1(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 any Development Consent and/or this agreement is invalid, the parties agree that from (and including) the Suspension Expiry Date:
- (i) the Landowners' obligation under this agreement to transfer or dedicate the Dedicated Land has full legal force and effect and where the Landowners have not transferred or dedicated the whole or any part of the Dedicated Land to the Council by the Suspension Expiry Date, the Landowners must transfer or dedicate the Dedicated Land to the Council by the dates or times referred to in Schedule 2 or such other time as agreed with Council;
  - (ii) the Landowners give their consent to the Council compulsorily acquiring the Dedicated Land upon the terms agreed in this agreement;
  - (iii) the Landowners' obligation under this agreement to enter into the Easement Instruments has full legal force and effect and where the Landowners have not entered into the Easement Instruments by the Suspension Expiry Date, the Landowners must enter into such Easement Instruments by the dates or times referred to in Schedule 2 or such other time as agreed with Council;
  - (iv) the Landowners give their consent to the Council compulsorily acquiring the Easement Instruments upon the terms agreed in this agreement; and
  - (v) the Developer's obligation under this agreement to undertake the Developer's Works has full legal force and effect.
- (d) If, at the end of the Suspension Period, there is an effective Court declaration or order that any Development Consent and/or this agreement is invalid, the parties agree that from (and including) the Suspension Expiry Date:
- (i) where the Landowners have:



- (A) transferred the whole or any part of the Dedicated Land to the Council or the Council has compulsorily acquired the Dedicated Land under this agreement by the Suspension Expiry Date, the provisions of clause 31.2 (a) –(c) apply; or
- (B) not transferred or dedicated the whole or any part of the Dedicated Land to the Council by the Suspension Expiry Date:
  - (i) the Landowners have no obligation to transfer or dedicate the whole or part of Dedicated Land and the Council cannot require the Landowners to transfer or dedicate the Dedicated Land; and
  - (ii) the consent provided under this agreement by the Landowners to the compulsory acquisition of the Dedicated Land is withdrawn, is of no effect and the Council cannot compulsorily acquire the Dedicated Land pursuant to this agreement;
  - (iii) where the Landowners have:
    - (A) entered into any or all of the Easement Instruments by the Suspension Expiry Date or the Council has compulsorily acquired the Easement Instruments under this agreement, the provisions of clause 31.1(c) apply; or
    - (B) not entered into any or all of the Easement Instruments by the Suspension Expiry Date:
      - (i) the Landowners have no obligation to enter into the Easement Instruments under this agreement and the Council cannot require the Landowners to enter into the Easement Instruments; and
      - (ii) the consent provided under this agreement by the Landowners to the compulsory acquisition of the Easement Instruments is withdrawn, is of no effect and the Council cannot compulsorily acquire the Easement Instruments;
      - (iii) the Landowners have 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 has been lodged

over the Land under clause 14.2, the Council must proceed to register at the LPI a withdrawal of that caveat in respect of that Land within 5 business days of that Court declaration or order.

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

- (a) In the event that clause 0 applies to the Dedicated Land, unless agreed otherwise by the Parties, the Council agrees to:
- (i) make an application to the Minister for Primary Industries under section 34 of the *Roads Act 1993* to close that part of the Transferred Land that has been dedicated as a public road within 20 business days after receipt of a notice from the Landowners requesting re-transfer to it of the Transferred Land; and
  - (ii) re-transfer or procure the re-transfer to the Landowners the Transferred Land within 20 business days of publication of the notice of closure of the Transferred Land as public roads under section 38 of the *Roads Act 1993* or 5 business days of a request from the Landowners for that part of the Transferred Land that was not dedicated as a public road.
- (b) In the event the Council is required to re-transfer to the Landowners the Transferred Lands pursuant to clause 31.2(a) the Council agrees to:
- (i) deliver, or procure to be delivered, to the Landowners:
    - (A) a form of transfer in respect of the Transferred Lands in favour of the Landowners for a consideration of \$1, executed by the Council and in registrable form except for acceptance by the Landowners 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 Landowners 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.
- (c) In the event that clause 31.1(d)(iii)(A) applies, unless agreed otherwise by the Parties, the Council must consent to the release of the Easement

Instruments over the Encumbered Land within 10 business days after receipt of a request from the Landowners.

### **32 FURTHER ACTS**

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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.

### **33 COMPLIANCE WITH LAWS**

---

If a Law is changed or a new Law comes into force (both referred to as New Law) and the Developer or Landowners are 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.

### **34 REQUIREMENTS UNDER SECTION 93F OF THE ACT**

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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.

### **35 COUNTERPARTS**

---

This agreement may be executed in any number of counterparts.

### **36 LIMITATION OF TRUSTEE'S CAPACITY AND LIABILITY**

---

- (a) If this agreement binds an entity in its capacity as a trustee or responsible entity (Trustee) of a trust (the Trust) it binds the Trustee only in its capacity as trustee or responsible entity of the Trust and in no other capacity. A liability arising under or in connection with this agreement is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.

- (b) No party to this agreement may sue the Trustee in any capacity other than as the responsible entity or trustee of the Trust (as the case may be), including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (c) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the deed constituting the trust or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as responsible entity or trustee (as the case may be) of the Trust.
- (d) Nothing in clause (c) shall make the Trustee liable to any claim for an amount greater than the amount which any party entitled to make a claim under this agreement would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
- (e) The Responsible Entity/Trustee is not obliged to do or refrain from doing anything under this agreement (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

### 37 EXPLANATORY NOTE

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The Parties agree that the explanatory note prepared in accordance with the regulations under the Act cannot be used to construe this agreement.

**38 LAND OWNERS' AND DEVELOPER'S ADDITIONAL OBLIGATIONS UNDER THIS AGREEMENT**

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- (a) (In the event that the Developer's rights to develop the Land pursuant to the legal arrangements it has with the Landowner as at the date of this agreement are terminated, then on and from the date of such termination, the Landowner agrees to perform all the Developer's obligations under this agreement in accordance with this agreement as if it were the Developer for the purposes of this agreement, until such time as alternative arrangements are agreed (and legally documented) between the Council and the Landowners in respect of a new developer performing some or all of those obligations, including complying with clause 18.1.
- (b) For the purpose of the Council enforcing the terms of this agreement, the Developer and the Landowners acknowledge and agree that they are jointly and severally liable for their respective obligations under the terms of this agreement to the extent permitted by law.

**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

MIRVAC PROJECTS PTY LTD  
(ACN 001 069 245) in accordance )  
with section 127 of the )  
Corporations Law: )  
)

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company  
secretary

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company  
secretary (print)

**Signed** by  
as attorney for **MIRVAC GEORGE  
STREET PTY LIMITED (ACN 098 668  
896)** under power of attorney dated  
[date] registered number [number]  
book number [book number] in the  
presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of witness (print)

**Signed** by  
as attorney for **MIRVAC FUNDS LTD  
(ACN 002 561 640)** under power of  
attorney dated [date] registered  
number [number] book number  
[book number] in the presence of

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of attorney

\_\_\_\_\_  
Name of witness (print)

## SCHEDULE 1 - REFERENCE SCHEDULE

Item	Name	Description
1	Developer's and Landowner's Names, ACN and Addresses	<p><b>MIRVAC PROJECTS PTY LTD (ACN 001 069 245)</b> Address Level 26, 60 Margaret Street Sydney NSW 2000 (Developer)</p> <p><b>MIRVAC GEORGE STREET PTY LIMITED (ACN 098 668 896)</b> in its capacity as trustee of the George Street Trust (ABN 87 855 852 129) Address Level 26, 60 Margaret Street, Sydney NSW 2000</p> <p><b>MIRVAC FUNDS LTD (ACN 002 561 640)</b> acting as responsible entity for Mirvac Property Trust (ABN 29 769 181 534) Address Level 26, 60 Margaret Street, Sydney NSW 2000</p> <p>(Landowners)</p>
2	Council's Representative	Graham Jahn
3	Land	<p><b>188-194A George Street:</b> Lot 4 DP 57434, Lot 1 DP 69466, Lot 1 DP 913005</p> <p><b>196-208 George Street:</b> Lots A to D DP 435746, Lot 1 DP 110607, Lot 1 DP 188061</p> <p><b>4 Dalley Street:</b> Lot 1 DP 107759</p> <p><b>1 Underwood Street:</b> Lot 20 DP 1063401</p>
4	Development Application No	Partial demolition of existing improvements and construction of a 37 storey commercial office tower with ground level retail, refurbishment of up to 5 storeys of the existing building at 4 Dalley Street and public domain works as set out in the development application D/2012/893
5	Monetary Contribution	\$2,575,702
6	Dedicated Land	Public Plaza and Land For Roads



7	Encumbered Land	The lands the subject of the Easement Instruments comprising Carriageway Land, Land for Public Access and Land for Public Footway and Recreation 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, art and granite infill paving in accordance with this agreement and Sydney Local Environmental Plan 2005 (Amendment No. 2) and Central Sydney Development Control Plan 1996 (Amendment No. 20).
9	Guarantee Amount	<p><b>In relation to the Developer's Works set out in Item A of Schedule 3, an amount of \$645,773.</b></p> <p><b>In relation to the works to Public Plaza set out in Item B of Schedule 3, an amount of \$200,000 .</b></p> <p><b>In relation to the Developer's Works set out in Item C of Schedule 3, an amount of \$67,508.</b></p> <p><b>In relation to the Monetary Contribution set out in item 5 of Schedule 1, an amount of \$2,575,702.</b></p> <p><b>Timing of provision of each Guarantee Amount (clause 11.1)</b> Prior to the date of execution of this agreement.</p>
10	Public Liability Insurance	\$20 million

11	<p>Notices <b>Council</b> Attention Address</p> <p>Phone: Fax Number Email:</p> <p><b>Developer and Landowners</b> Attention Address</p> <p>Phone: Fax Number Email:</p>	<p>Graham Jahn, Director of Development Town Hall House, 456 Kent Street Sydney 2000 9265 9333 9265 9222 <a href="mailto:gjahn@cityofsydney.nsw.gov.au">gjahn@cityofsydney.nsw.gov.au</a></p> <p>Simon Healy Project Director Level 26, 60 Market Street SYDNEY N.S.W. 2000 9080 8187 9080 8201 <a href="mailto:simon_healy@mirvac.com">simon_healy@mirvac.com</a></p>
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**SCHEDULE 2 - TIMING OF DEVELOPMENT CONTRIBUTIONS**

<b>Item</b>	<b>Development Contribution</b>	<b>Timing</b>
<b>1</b>	Easement Instrument in relation to Land for Public Access and Developer's Works  Clauses 5.2 and 9.7	Prior to the issue of the first Occupation Certificate for the Development.
<b>2</b>	Easement Instrument in relation to Land for Public Footway and Recreation and Developer's Works Clause 5.3	Prior to the issue of the first Occupation Certificate for the Development
<b>3</b>	Dedicated Land Clause 5.1	Prior to the issue of the first Occupation Certificate for the Development.
<b>4</b>	Monetary Contribution Clause 6	Prior to the issue of any Construction Certificate that approves the construction of any structures above the ground floor of the Development
<b>5</b>	Easement Instrument in relation to Right of Carriageway and Developer's Works Clause 5.4	Prior to the issue of the first Occupation Certificate for the Development

**SCHEDULE 3 - DEVELOPER'S WORKS****SECTION 1 – THE WORKS****ITEM A Widened Crane Place, Carriageway Land, Land for Public Access and George Street Footway Widening**

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, and any other necessary suspended structure;
- 50mm depth Austral Black granite pavers;
- finished levels to Council approved alignment levels including utility pit lid adjustments;
- stormwater and drainage as may be required;
- lighting including light poles and under awning lighting;
- way-finding and traffic signage;
- stainless steel handrails at Widened Crane Place steps;
- a lift at the eastern end of the Land for Public Access (design and construction to comply with Disability Discrimination Act 1992 requirements);
- steps allowing access to the existing electrical easement under the Land for Public Access;
- design the Development to ensure a direct line of site from George Street through the Land for Public Access to Pitt Street;
- security cameras

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 Widened Crane Place, Carriageway Land, George Street Footpath Widening and Land for Public Access.

**ITEM B The Public Plaza**

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;
- stormwater and drainage;
- lighting including light poles;

- essential services including water supply, sewer, electrical, telecommunications and gas connections;
- way-finding and traffic signage;
- A screening element or some other treatment as agreed with the Council is to be installed along the entire length of the northern and southern edges so as to make good and / or shield the Landscaped Park from the exposed facades of the adjoining buildings. If such screening is agreed, it will not exceed 1.8 metres in height and will not rely on any fixings or support from the adjoining buildings.

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 up to a maximum cost of \$200,000 within the areas of land identified as Public Plaza .

### **ITEM C      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 and base course;
- 50mm depth Austral Black granite pavers installed on a reinforced concrete slab suitable for traffic loading;
- finished levels to Council approved alignment levels including utility pit lids;
- stormwater and drainage;
- lighting including light poles and under awning lighting;
- way-finding signage;
- traffic and parking controls;

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

Works must be undertaken by the Developer at no cost to Council within the Lands for Roads.

### **Design Refinement**

The alignment of the land marked as 'Road' on the Plan is to align with the adjoining laneways to the north of the Development site including the Land for Public Access to Herald Square (as associated with the development known as 1 Alfred Street) in accordance with DCP 1996 Amendment No. 20 Alfred, Pitt, Dalley and George Street (APDG) Site.

## 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
- 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
- Draft I 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

Draft

**SCHEDULE 5 - PROPOSED INSTRUMENT RIGHT OF PUBLIC ACCESS**

See separate document

draft



SCHEDULE 6- PROPOSED INSTRUMENT RIGHT OF FOOTWAY AND RECREATION

See separate document

draft

SCHEDULE 7 - PROPOSED INSTRUMENT RIGHT OF CARRIAGEWAY

See separate document

draft

**SCHEDULE 8 - PLAN**

See separate document

draft

## 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) Yes</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))	As generally set out in Item 4 of Schedule 1
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 15
Enforcement of this agreement (section 93 F(3)(g))	See clauses 8.4 10.8, 12, 14 and 30
No obligation to grant consent or exercise functions(section 93 F (9))	See clause 24

# ATTACHMENT D

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# ATTACHMENT D

**SCHEDULE 5  
PROPOSED INSTRUMENT RIGHT OF PUBLIC ACCESS AND POSITIVE COVENANT**

**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 12 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:** [to be inserted]

## Part 1 (Creation)

<b>Number of item shown in the intention panel on the plan</b>	<b>Identity of easement, right of carriageway or restriction to be created and referred to in the plan.</b>	<b>Burdened (lot(s) or parcel(s):</b>	<b>Benefitted lot(s), road(s), bodies or Prescribed Authorities:</b>
1.	Right of public access marked A on the Plan, 4.5m wide and variable, 8.0m high and variable, limited in height and in depth as delineated on the Plan [height subject to intrusion from the pedestrian link bridge (which will link the mezzanine level plant area to the lift core) and the George Street footpath awning, both being subject to the Development Consent and to be shown on final	[Lot A DP 435746 Lot B DP 435746 Lot 20 DP 1063401] Subject to Survey	Council of the City of Sydney

# ATTACHMENT D

(Sheet 2 of 12 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:** [To be inserted]

	Plan.]  <b>[Land for Public Access]</b>		
2.	Positive covenant in relation to the right of public access	[Lot A DP 435746 Lot B DP 435746 Lot 20 DP 1063401] Subject to Survey	Council of the City of Sydney



# ATTACHMENT D

(Sheet 3 of 12 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:** [To be inserted]

## 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 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.

**Development Consent** means the consent, as modified from time to time under section 96 of the Act, granted to the development application 893/2012 in respect of the Site and lodged with Council.

**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.

# ATTACHMENT D

(Sheet 4 of 12 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:** [To be inserted]

**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.

**Plan** means the plan of proposed subdivision of the Site dated 4 October 2012 (Issue 4) prepared by Mark Andrew (Surveyor) registered together with this Instrument.

**Site** means the land known as 190 to 200 George Street and 4 Dalley Street, Sydney and comprising folio identifiers Lot 4 DP 57434, Lot 1 DP 69466, Lot 1 DP 913005, Lots A to D DP 435746, Lot 1 DP 110607, Lot 1 DP 188061, Lot 1 DP 107759 and Lot 20 DP 1063401.

## 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.

# ATTACHMENT D

(Sheet 5 of 12 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:** [To be inserted]

- (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.
- (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.

**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:** [To be inserted]

## 1.5 Limitation of Trustee's Capacity and Liability

- (a) If this Instrument binds an entity in its capacity as a trustee or responsible entity (Trustee) of a trust (the Trust) it binds the Trustee only in its capacity as trustee or responsible entity of the Trust and in no other capacity. A liability arising under or in connection with this Instrument is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Instrument and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Instrument.
- (b) No party to this Instrument may sue the Trustee in any capacity other than as the responsible entity or trustee of the Trust (as the case may be), including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (c) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the deed constituting the trust or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as responsible entity or trustee (as the case may be) of the Trust.
- (d) Nothing in clause (c) shall make Trustee liable to any claim for an amount greater than the amount which any party entitled to make a claim under this Instrument would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
- (e) The Responsible Entity/Trustee is not obliged to do or refrain from doing anything under this Instrument (including incur any liability) unless its

**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:** [To be inserted]

liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## 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 Instrument 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:

**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:** [To be inserted]

- (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**

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### **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 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 and to permit Council works to the Easement Site.

**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:** [To be inserted]

## 2.3 Works to Lot Burdened

- (a) Subject to ensuring access for the purpose set out in clause 2.2 and compliance with the requirements of clause 2.4 the Owner of the Lot Burdened may:
- (i) 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;
  - (ii) permit doors to open out into the Easement Site; and
  - (iii) 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 within the Easement Site.
- (b) For the avoidance of doubt, any improvements or encroachments on the Easement Site that have been approved under the Development Consent are not in breach of this Instrument.

## 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 (including the use of vehicles and equipment for those purposes); or
- (b) carrying out obligations under clause 3.1 or any other obligation under this Instrument;
- (c) providing access to the relevant electricity authority to gain access to the high voltage electrical cables which are located beneath part of the Easement Site for any necessary inspection or maintenance or in the event of an Emergency Situation relating to the high voltage electrical cables.

provided that:

S:3145909\_1 RCM

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Authorised Person  
Council of the City of Sydney

**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:** [To be inserted]

- (d) such restriction is for a period not exceeding one month or such other period of time as agreed by the Council;
- (e) where the restriction is for a period not exceeding 24 hours, the Owner of the Lot Burdened takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1; and
- (f) where the restriction is likely to be for a period for between 24 hours and up to one month, the Owner of the Lot Burdened:
  - (A) obtains the prior written consent of the Council and complies with any conditions imposed on that consent; and
  - (B) 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 or the Owner of the Lot Burdened may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public if either of them 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 at all times 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.



**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:** [To be inserted]

**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 or its Authorised Users.

**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**

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**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
- (d) if required by Council, upgrade and refurbish the Easement Site if the condition of the Easement Site becomes degraded and damaged,

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.

# ATTACHMENT D

(Sheet 12 of 12 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:** [To be inserted]

## 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.

# ATTACHMENT D

**SCHEDULE 6  
PROPOSED INSTRUMENT RIGHT OF FOOTWAY AND RECREATION AND POSITIVE  
COVENANT**

**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 12 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:** [to be inserted]

## Part 1 (Creation)

<b>Number of item shown in the intention panel on the plan</b>	<b>Identity of easement, right of carriageway or restriction to be created and referred to in the plan.</b>	<b>Burdened (lot(s) or parcel(s):</b>	<b>Benefitted lot(s), road(s), bodies or Prescribed Authorities:</b>
	Right of Footway and Recreation marked as "D" on the Plan and limited in height and depth as delineated on the Plan[ <b>Carriageway Land</b> ]	[Lot 1 DP 913005 Lot 1 DP 69466 Lot 4 DP 57434 Lot 20 DP 1063401] Subject to Survey	Council of the City of Sydney
	Right of Footway and Recreation marked as "C" on the Plan and limited in height and depth as delineated on the Plan.[ <b>Widened Crane Place</b> ]	[Lot 1 DP 69466 Lot 4 DP 57434] Subject to Survey	Council of the City of Sydney

# ATTACHMENT D

(Sheet 2 of 12 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:** [to be inserted]

	Right of Footway and Recreation marked as "B1" and "B2" on the Plan and limited in height and depth as delineated on the Plan[ <b>George Street Footway Widening</b> ]	[Lot 1 DP 69466 Lot 1 DP 110607 Lot 1 DP 188061 Lot A DP 435746 Lot B DP 435746 Lot C DP 435746 Lot D DP 435746] Subject to Survey	Council of the City of Sydney
1.	Positive covenant in relation to the right of Footway and Recreation	[Lot 1 DP 913005 Lot 1 DP 69466 Lot 4 DP 57434 Lot 1 DP 110607 Lot 1 DP 188061 Lot A DP 435746 Lot B DP 435746 Lot C DP 435746 Lot D DP 435746 Lot 20 DP 1063401] Subject to Survey	Council of the City of Sydney

# ATTACHMENT D

(Sheet 3 of 12 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:** [to be inserted]

## Part 2 (Terms)

### 1 Interpretation

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#### 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 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.

**Development Consent** means the consent, as modified from time to time under section 96 of the Act, granted to the development application 893/2012 in respect of the Site and lodged with Council.

**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.

# ATTACHMENT D

(Sheet 4 of 12 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:** [to be inserted]

**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.

**Plan** means the plan of proposed subdivision of the Site dated 4 October 2012 (Issue 4) prepared by Mark Andrew (Surveyor) registered together with this Instrument.

**Site** means the land known as 190 to 200 George Street and 4 Dalley Street, Sydney and comprising folio identifiers Lot 4 DP 57434, Lot 1 DP 69466, Lot 1 DP 913005, Lots A to D DP 435746, Lot 1 DP 110607, Lot 1 DP 188061, Lot 1 DP 107759 and Lot 20 DP 1063401.

## 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.

# ATTACHMENT D

(Sheet 5 of 12 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:** [to be inserted]

- (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.
- (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.

**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:** [to be inserted]

## 1.5 Limitation of Trustee's Capacity and Liability

- (a) If this Instrument binds an entity in its capacity as a trustee or responsible entity (Trustee) of a trust (the Trust) it binds the Trustee only in its capacity as trustee or responsible entity of the Trust and in no other capacity. A liability arising under or in connection with this Instrument is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Instrument and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Instrument.
- (b) No party to this Instrument may sue the Trustee in any capacity other than as the responsible entity or trustee of the Trust (as the case may be), including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (c) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the deed constituting the trust or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as responsible entity or trustee (as the case may be) of the Trust.
- (d) Nothing in clause (c) shall make Trustee liable to any claim for an amount greater than the amount which any party entitled to make a claim under this Instrument would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
- (e) The Responsible Entity/Trustee is not obliged to do or refrain from doing anything under this Instrument (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.



**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:** [to be inserted]

## 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 Instrument 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

**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:** [to be inserted]

- (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 Footway and Recreation numbered 1 above**

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### **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 and use the Easement Site for passive recreational purposes at all times:
  - (i) on foot; or
  - (ii) with wheelchairs or other disabled access aids, including guide dogs but excluding all other vehicles and 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 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 enabling the use of the Easement Site as public open space by any member of the public.

### **2.3 Works to Lot Burdened**

- (a) Subject to ensuring access for the purpose set out in clause 2.2 and compliance with the requirements of clause 2.4 the Owner of the Lot Burdened may:

**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:** [to be inserted]

- (i) 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;
  - (ii) permit doors to open out into the Easement Site; and
  - (iii) 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 within the Easement Site.
- (b) For the avoidance of doubt, any improvements or encroachments on the Easement Site that have been approved under the Development Consent are not in breach of this Instrument.

## 2.4 Restriction on rights

Without limiting separate rights of access or carriageways over the Easement Site, 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 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 (including the use of vehicles and equipment for those purposes); or
- (b) carrying out obligations under clause 3.1 or any other obligation under this Instrument,

provided that:

**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:** [to be inserted]

- (c) such restriction is for a period not exceeding one month or such other period of time as agreed by the Council;
- (d) where the restriction is for a period not exceeding 24 hours, the Owner of the Lot Burdened takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1; and
- (e) where the restriction is likely to be for a period for between 24 hours and up to one month, 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 or the Owner of the Lot Burdened may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public if either of them 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 at all times 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.

**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:** [to be inserted]

## 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 or the Council's Authorised Users.

## 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

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### 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
- (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

# ATTACHMENT D

(Sheet 12 of 12 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:** [to be inserted]

- (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.

# ATTACHMENT D

**SCHEDULE 7**  
**PROPOSED INSTRUMENT RIGHT OF CARRIAGEWAY AND POSITIVE COVENANT**

**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 12 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:** [to be inserted]

## Part 1 (Creation)

<b>Number of item shown in the intention panel on the plan</b>	<b>Identity of easement, right of carriageway or restriction to be created and referred to in the plan.</b>	<b>Burdened (lot(s) or parcel(s):</b>	<b>Benefited lot(s), road(s), bodies or Prescribed Authorities:</b>
1.	Right of carriageway marked as "D" on the Plan limited in height and depth as shown on the Plan	[Lot 1 DP 913005 Lot 1 DP 69466 Lot 4 DP 57434 Lot 20 DP 1063401] Subject to Survey	Council of the City of Sydney

# ATTACHMENT D

(Sheet 2 of 12 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:** [to be inserted]

## Part 2 (Terms)

### 1 Interpretation

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#### 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 for the purposes of the Easement created by this Instrument, including:

- (a) employees, agents, servants, contractors, workmen and licensees of the Council; and
- (b) emergency service workers.

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

**Development Consent** means the consent, as modified from time to time under section 96 of the Act, granted to the development application 893/2012 in respect of the Site and lodged with Council.

**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.



# ATTACHMENT D

(Sheet 3 of 12 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:** [to be inserted]

**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.

**Plan** means the plan of proposed subdivision of the Site dated 4 October 2012 (Issue 4) prepared by Mark Andrew (Surveyor) registered together with this Instrument.

**Site** means the land known as 190 to 200 George Street and 4 Dalley Street, Sydney and comprising folio identifiers Lot 4 DP 57434, Lot 1 DP 69466, Lot 1 DP 913005, Lots A to D DP 435746, Lot 1 DP 110607, Lot 1 DP 188061, Lot 1 DP 107759 and Lot 20 DP 1063401.

## 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.

# ATTACHMENT D

(Sheet 4 of 12 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:** [to be inserted]

- (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.
- (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) If this Instrument binds an entity in its capacity as a trustee or responsible entity (Trustee) of a trust (the Trust) it binds the Trustee only in its capacity as trustee or responsible entity of the Trust and in no other capacity. A liability arising under or in connection with this Instrument is limited to and can be enforced against the Trustee only to the extent to which it can be

# ATTACHMENT D

(Sheet 5 of 12 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:** [to be inserted]

and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. This limitation of the Trustee's liability applies despite any other provision of this Instrument and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Instrument.

- (b) No party to this Instrument may sue the Trustee in any capacity other than as the responsible entity or trustee of the Trust (as the case may be), including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (c) The provisions of this clause shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under the deed constituting the trust or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as responsible entity or trustee (as the case may be) of the Trust.
- (d) Nothing in clause (c) shall make Trustee liable to any claim for an amount greater than the amount which any party entitled to make a claim under this Instrument would have been able to claim and recover from the assets of the Trust in relation to the relevant liability if the Trustee's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
- (e) The Responsible Entity/Trustee is not obliged to do or refrain from doing anything under this Instrument (including incur any liability) unless its liability is limited in the same manner as set out in paragraphs (a) to (d) of this clause.

## 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

# ATTACHMENT D

(Sheet 6 of 12 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:** [to be inserted]

- (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 Instrument 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.

# ATTACHMENT D

(Sheet 7 of 12 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:** [to be inserted]

## **2 Terms of Right of Carriageway numbered 1 above**

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### **2.1 Terms of the Easement**

Subject to clauses 2.2 to 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 at all times with vehicles for which the carriageway is designed, for the purpose of accessing and servicing land owned by the Council 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) for the purposes of carrying out any demolition, excavation or construction works or for vehicles with a maximum gross weight exceeding 3 tonnes, other than with the consent of the Owner of the Lot Burdened.

### **2.3 Conditions of access**

- (a) The Owner of the Lot Burdened must not use the Easement Site in such a way as to unreasonably obstruct or unreasonably interfere with the use and enjoyment of the Easement Site by the Council.
- (b) For the avoidance of doubt, any improvements or encroachments on the Easement Site that have been approved under the Development Consent are not in breach of this Instrument.
- (c) The Council 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 Council or its Authorised Users, which amount shall be a liquidated debt owed by the Council to the Owner of the Lot Burdened;

# ATTACHMENT D

(Sheet 8 of 12 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:** [to be inserted]

- (i) 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
- (ii) must cause as little disturbance or damage as possible to the Easement Site.

## 2.4 Works to Lot Burdened

- (a) Subject to ensuring the provision of access in accordance with clause 2.1 and compliance with the requirements of clause 2.4 the Owner of the Lot Burdened may:
  - (i) 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;
  - (ii) permit doors to open out into the Easement Site; and
  - (iii) 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 within the Easement Site.
- (b) For the avoidance of doubt, any improvements or encroachments on the Easement Site that have been approved under the Development Consent are not in breach of this Instrument.

## 2.5 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 (including the use of vehicles and equipment); or
- (b) carrying out obligations under paragraph 3.1 or any other obligation under this Instrument,

provided that:

S:3145911\_1 RCM

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Authorised Person  
Council of the City of Sydney

# ATTACHMENT D

(Sheet 9 of 12 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:** [to be inserted]

- (c) such restriction is for a period not exceeding one month or such other period of time as agreed by the Council;
- (d) where the restriction is for a period not exceeding 24 hours, the Owner of the Lot Burdened takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1; and
- (e) where the restriction is likely to be for a period for between 24 hours and up to one month, 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

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.

## 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 or its Authorised Users.

## 2.8 Release

This Right of Carriageway is released on the date that that part of lot 7 in deposited plan 629694 that adjoins the Site is dedicated as a public road. The Council must do all things reasonably required to remove this Right of Carriageway from the title to the Lot Burdened.

# ATTACHMENT D

(Sheet 10 of 12 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:** [to be inserted]

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

Subject to clause 2.8. this Right of Carriageway may only be released, varied or modified with the consent of each of the Council and the Owner of the Lot Burdened.



# ATTACHMENT D

(Sheet 11 of 12 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:** [to be inserted]

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

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### **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 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 Council.

### **3.2 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.

### **3.3 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:

# ATTACHMENT D

(Sheet 12 of 12 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:** [to be inserted]

- (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 each of the Council and the Owner of the Lot Burdened.

**DEPOSITED PLAN ADMINISTRATION SHEET**

Sheet 1 of 2 sheet(s)

Office Use Only

Office Use Only

Registered:  
Title System:  
Purpose:

**DRAFT PLAN**  
**PRINTED 13 NOV 2012**  
**(ISSUE 7)**

PLAN OF PROPOSED SUBDIVISION OF  
LOT1 D.P.69466, LOT 1 D.P.110607,  
LOT 1 D.P.913005, LOT 1 D.P.188061,  
LOTS A TO D INCLUSIVE D.P.435746  
LOT 1 D.P.107759 AND LOT 20 D.P.1063401  
LOT 4 D.P.57434

LGA: CITY OF SYDNEY  
Locality: SYDNEY  
Parish: ALEXANDRIA  
County: CUMBERLAND

Crown Lands NSW/Western Lands Office Approval

I..... (Authorised Officer) in approving this plan certify that all necessary approvals in regard to the allocation of the land shown herein have been given

Signature: .....

Date: .....

File Number: .....

Office: .....

Surveying Certificate

I, **MARK JOHN ANDREW** .....

of Denny Linker & Co

a surveyor registered under the *Surveying and Spatial Information Act 2002*, certify that

\*(a) The land shown in the plan was surveyed in accordance with the Surveying and Spatial Information Regulation, 2012, is accurate and the survey was completed on: .....

\*(b) The part of the land shown in the plan (being/\*excluding^.....)

.....) was surveyed in accordance with the Surveying and Spatial Information Regulation 2012, is accurate and the survey was completed on, ..... the part not surveyed was compiled in accordance with hat Regulation.

\*(c) The land shown in this plan was compiled in accordance with the Surveying and Spatial Information Regulation 2012.

Signature: ..... Dated: .....

Surveyor ID: .....

Datum Line: .....

Type: \*Urban/\*Rural

The terrain is \*Level-Undulating / \*Steep-Mountainous.

\*Strike through if inapplicable.

\*Specify the land actually surveyed or specify any land shown in the plan that is not the subject of the survey.

Subdivision Certificate

I.....  
\*Authorised Person/\*General Manager/\*accredited Certifier, certify that the provisions of s.109J of the Environmental Planning and Assessment Act 1979 have been satisfied in relation to the proposed subdivision, new road or reserve set out herein.

Signature: .....

Accreditation no: .....

Consent/Authority: .....

Date of Endorsement: .....

Subdivision Certificate no: .....

File no: .....

\*Strike through if inapplicable

STATEMENTS of intention to dedicate public roads, public reserves and drainage easements

Plans used in the preparation of survey/compilation

If space is insufficient continue on PLAN FORM 6A

Signatures, Seals and Section 88B Statements should appear on  
PLAN FORM 6A

SURVEYORS REFERENCE: **110821 D SUB**

**DEPOSITED PLAN ADMINISTRATION SHEET**

Sheet 2 of 2 sheet(s)

Office Use Only

Office Use Only

Registered:

## DRAFT PLAN

PRINTED 13 NOV 2012  
(ISSUE 7)

PLAN OF PROPOSED SUBDIVISION OF  
LOT1 D.P.69466, LOT 1 D.P.110607,  
LOT 1 D.P.913005, LOT 1 D.P.188061,  
LOTS A TO D INCLUSIVE D.P.435746  
LOT 1 D.P.107759 AND LOT 20 D.P.1063401  
LOT 4 D.P.57434

This sheet is for the provision of the following information as required:

- A schedule of lots and addresses - See 60(c) SSI Regulation 2012
- Statements of intention to create and release affecting interests in accordance with section 88B Conveyancing Act 1919
- Signatures and seals - see 195D Conveyancing Act 1919
- Any information which cannot fit in the appropriate panel of sheet 1 of the administration sheets.

Subdivision Certificate No: .....

Date of Endorsement: .....

**PURSUANT TO SEC. 88B OF THE CONVEYANCING ACT 1919 IT IS INTENDED TO CREATE:**

1. RIGHT OF PUBLIC ACCESS LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.(A)
2. RIGHT OF FOOTWAY AND RECREATION LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.(B)
3. RIGHT OF FOOTWAY AND RECREATION LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.(C)
4. RIGHT OF FOOTWAY AND RECREATION AND RIGHT OF CARRIAGEWAY LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE. (D)
5. EASEMENT FOR SERVICES 1 WIDE (E)

**IT IS INTENDED TO DEDICATE THE AREA MARKED AS 'ROAD' TO THE PUBLIC AS ROAD UNDER ROADS ACT 1993**

If space is insufficient use additional annexure sheet

SURVEYORS REFERENCE: 110821 D SUB

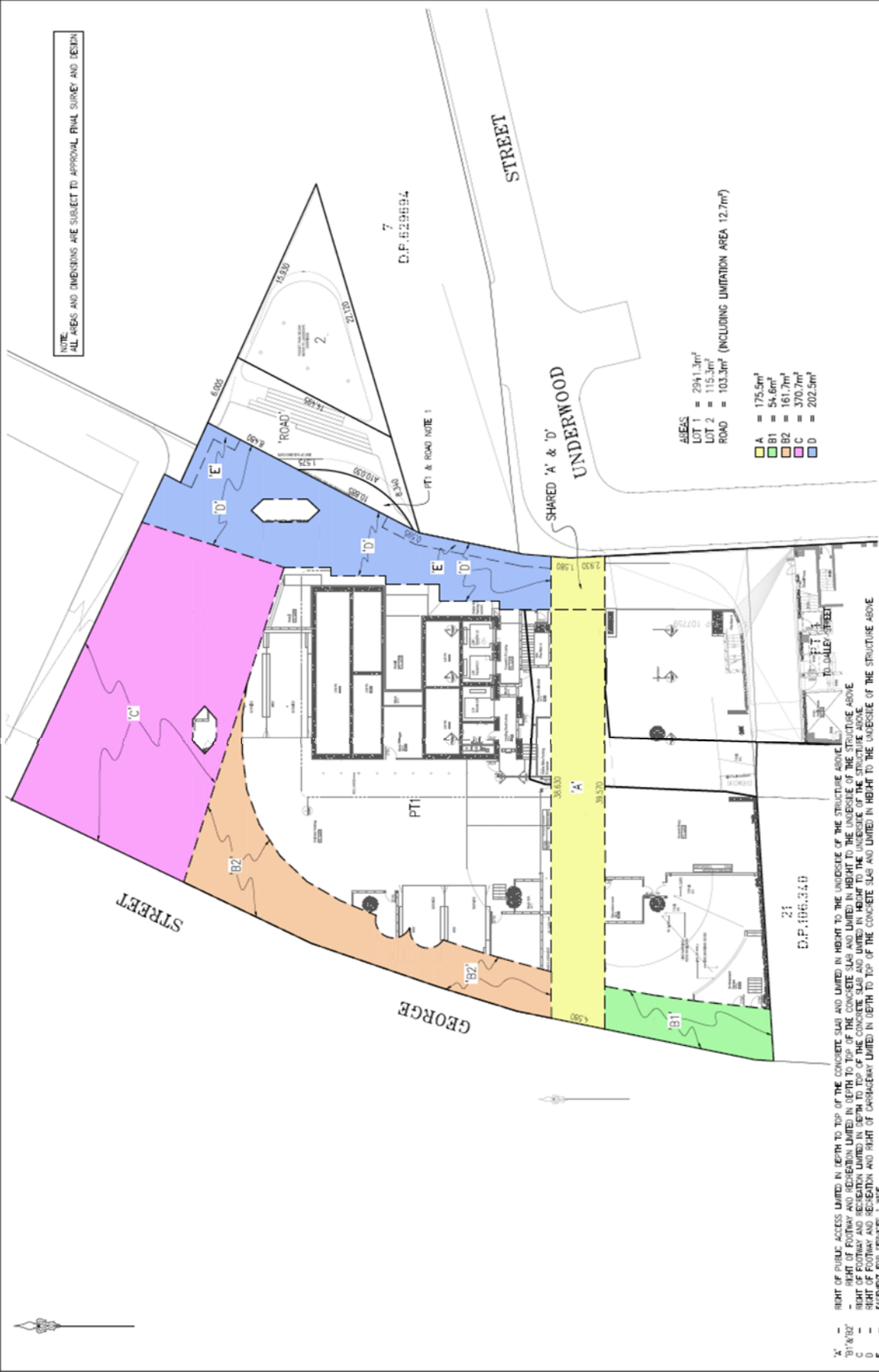
# ATTACHMENT D

PLAN FORM 2 (A2)

Sheet No. 1 of 1 Sheets

WARNING: CREASING OR FOLDING WILL LEAD TO REJECTION

NOTE:  
ALL AREAS AND DIMENSIONS ARE SUBJECT TO APPROVAL FINAL SURVEY AND DESIGN



AREAS

LOT 1	= 2941.3m <sup>2</sup>
LOT 2	= 115.3m <sup>2</sup>
ROAD	= 103.3m <sup>2</sup> (INCLUDING LIMITATION AREA 12.7m <sup>2</sup> )

A	= 175.5m <sup>2</sup>
B1	= 54.6m <sup>2</sup>
B2	= 161.7m <sup>2</sup>
C	= 370.7m <sup>2</sup>
D	= 202.5m <sup>2</sup>

'A' - RIGHT OF PUBLIC ACCESS LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE. THE USE OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE FOR FOOTWAY AND SEPARATION LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.  
 'B' - RIGHT OF FOOTWAY AND SEPARATION LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.  
 'C' - RIGHT OF FOOTWAY AND SEPARATION LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.  
 'D' - RIGHT OF FOOTWAY AND SEPARATION LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.  
 'E' - RIGHT OF FOOTWAY AND SEPARATION LIMITED IN DEPTH TO TOP OF THE CONCRETE SLAB AND LIMITED IN HEIGHT TO THE UNDERSIDE OF THE STRUCTURE ABOVE.

ALL ABOVE EXCISEMENTS EXCLUDE APPROVED COLUMNS AND STRUCTURAL FEATURES  
 NOTE 1:  
 THE ROAD IS LIMITED IN HEIGHT TO THE UNDERSIDE OF THE TOWER ABOVE AND UNLIMITED IN DEPTH.  
 THE AREA MARKED AS ROAD TO BE DEDICATED AS PUBLIC ROAD UNDER ROADS ACT 1993

Surveyor: MARK JOHN ANDREW  
 Date of Survey: 02/10/2012  
 Surveyor's Ref: 110821 D SUB

PLAN OF PROPOSED SUBDIVISION OF  
 LOT 1 D.P. 90460, LOT 1 D.P. 110007,  
 LOT 1 D.P. 913005, LOT 1 D.P. 188061,  
 LOTS A TO D INCLUSIVE D.P. 435740  
 LOT 1 D.P. 107759 AND LOT 20 D.P. 1063401  
 LOT 4 D.P. 57434

DRAFT PLAN  
 PRINTED 13 NOV 2012  
 (ISSUE 7)

LOCALITY: SYDNEY  
 SUBDIVISION NO: 110821 D SUB  
 LENGTH AND BREADTH: 200 (EAST) STREET (SUBDIVISION) 110821 D SUB