

ATTACHMENT G

**PLANNING AGREEMENT BETWEEN THE
COUNCIL OF THE CITY OF SYDNEY
("COUNCIL") AND AMP CAPITAL
INVESTORS LIMITED IN ITS CAPACITY AS
TRUSTEE OF THE AMP CAPITAL
WHOLESALE OFFICE FUND, ACPPT OFFICE
PTY LIMITED IN ITS CAPACITY AS
TRUSTEE OF THE ACPPT OFFICE TRUST,
KENT STREET PTY LIMITED IN ITS
CAPACITY AS TRUSTEE OF THE SYDNEY
COVE TRUST, KENT STREET PTY LIMITED
IN ITS CAPACITY AS TRUSTEE OF THE
LOFTUS STREET TRUST (EACH A "LAND
OWNER")**

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

(“Council”)

and

AMP Capital Investors Limited ACN 001 777 591 in its capacity as trustee of the AMP Capital Wholesale Office Fund ABN 56 724 311 688

ACPP Office Pty Limited ACN 108 662 031 in its capacity as trustee of the ACPP Office Trust ABN 28 226 741 631

Kent Street Pty Limited ACN 006 794 654 in its capacity as trustee of the Sydney Cove Trust ABN 31 149 459 738

Kent Street Pty Limited ACN 006 794 654 in its capacity as trustee of the Loftus Street Trust ABN 93 573 234 985

(each a “Land Owner”)

Planning Agreement

Environmental Planning and Assessment Act 1979

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THIS deed is dated

2013

PARTIES:

THE COUNCIL OF THE CITY OF SYDNEY (ABN 22 636 550 790) of 456 Kent Street, Sydney, New South Wales, 2000 (**Council**)

Each of:

AMP CAPITAL INVESTORS LIMITED (ACN 001 777 591) in its capacity as trustee of the AMP Capital Wholesale Office Fund (ABN 56 724 311 688) of Level 13, 50 Bridge Street, SYDNEY NSW 2000

ACPP OFFICE PTY LIMITED (ACN 108 662 031) in its capacity as trustee of the ACPP Office Trust (ABN 28 226 741 631) of Level 24, AMP Building, 33 Alfred Street, SYDNEY NSW 2000

KENT STREET PTY LIMITED (ACN 006 794 654) in its capacity as trustee of the Sydney Cove Trust (ABN 31 149 459 738) of Level 24, AMP Building, 33 Alfred Street, SYDNEY NSW 2000

KENT STREET PTY LIMITED (ACN 006 794 654) in its capacity as trustee of the Loftus Street Trust (ABN 93 573 234 985) of Level 24, AMP Building, 33 Alfred Street, SYDNEY NSW 2000

(each a **Land Owner**)

1 INTRODUCTION

- A.** The Land Owners own the Land.
- B.** The Land Owners intend to carry out the Development on the Land.
- C.** The Land Owners have sought a change to an environmental planning instrument, being the LEP, which will result in the Land being rezoned ("**LEP Amendment**").
- D.** The Council has prepared and exhibited a planning proposal to make the LEP Amendment.
- E.** This deed constitutes an agreement between the Land Owners and the Council that the Land Owners (as applicable) will pay monetary contributions, dedicate land or provide other material public benefits, or a combination of them to Council, in connection with the LEP Amendment on the terms and conditions of this deed.
- F.** The Development may be carried out in a number of Stages.

IT IS AGREED:

2 DEFINITIONS AND INTERPRETATION

2.1 Definitions

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

2-10 Loftus Street Land means the land comprised in certificate of title folio identifier 501/709624 known as 2-10 Loftus Street, Sydney NSW.

9-13 Young Street Land means the land comprised in certificate of title Auto Consol 11987-71 known as 9-13 Young Street, Sydney NSW.

15-17 Young Street Land means the land comprised in certificate of title folio identifier 1/810463 known as 15-17 Young Street, Sydney NSW.

16-20 Loftus Street Land means the land comprised in certificate of title folio identifier 1/134861 known as 16-20 Loftus Street, Sydney NSW.

33 Alfred Street Land means the land comprised in certificate of title folio identifier 1/1073376 known as 33 Alfred Street, Sydney NSW.

50 Bridge Street Land means the land comprised in certificate of title folio identifier 2/1073376 known as 50 Bridge Street, Sydney NSW.

50 Bridge Street Owners means the registered proprietors of the 50 Bridge Street Land from time to time, being ACPD Office Pty Limited (ACN 108 662 031) in its capacity as trustee of ACPD Office Trust (ABN 28 226 741 631) and AMP Capital Investors Limited (ACN 001 777 591) in its capacity as trustee of the AMP Capital Wholesale Office Fund (ABN 56 724 311 688) (as tenants in common in equal shares) as at the date of this deed.

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

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

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

Airspace Lot Contribution means the dedication of the Airspace Lots in accordance with clause 2.1 of Schedule 4.

Airspace Lot means each lot defined by the boundary of the Lots on which a Relevant Building is located and limited in depth to 1.5 metres above the highest point of that Building and unlimited in height, and **Airspace Lots** means any two or more of them (as the context requires).

Airspace Lot Covenants means the proposed instrument and terms of easement and restriction on the use of land to be created over each Airspace Lot under this deed in accordance with section 88B of the Conveyancing Act and set out in Schedule 9 or as amended with the consent of both Parties, providing for:

- (a) a restriction on the use of land in favour of each owner of a Lot, prohibiting the erection of improvements or the carrying out of any uses within each Airspace Lot, subject to the easement and covenants described in paragraph (b), (c) and (d) below;
- (b) an easement for light and air and building maintenance, including a restriction on the use of land in favour of each owner of a Lot, providing that the Airspace Lot must not be used for any purpose other than the provision of light and air to each Lot;
- (c) an easement for construction access, including the erection and maintenance of craneage for the benefit of each Lot; and

- (d) an easement for encroaching structures, including antennas, flag poles and other items permitted under the LEP within the sun access plane affecting the relevant Airspace Lot, for the benefit of each Lot directly below the relevant Airspace Lot.

Applicable Contribution means the Contributions required to be delivered in respect of each Applicable Lot, as specified in Column 6 of the table in Schedule 3.

Applicable Lot means the part of the Land comprised in each Lot shown in Column 1 of the table in Schedule 3.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by law or an Authority.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Building means, as the context requires, each new building to be constructed and each existing building to be redeveloped on the Land as part of the Development.

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 Relevant Land Owners which have the obligation to deliver the Applicable Contributions that are secured by the Bond;
- (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 deed.

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

Capital Investment Value means all costs necessary to establish and operate the Development, including the design and construction of Buildings, structures, associated infrastructure and fixed or mobile plant and equipment, other than the following costs:

- (a) amounts payable, or the cost of land dedicated or any other benefit provided, under a condition imposed under Division 6 or 6A of Part 4 of the Act or a planning agreement under that Division (including this deed);
- (b) costs relating to any part of the development or project that is the subject of a separate development consent or project approval, other than any Stage 2 Development Consent;
- (c) land costs (including any costs of marketing and selling land); and
- (d) GST,

calculated and certified by a Quantity Surveyor in accordance with clause 3(c) of Schedule 4, and delivered in a manner acceptable to the Council.

Certificate means a certificate given by the Council in accordance with clause 7.6:

- (a) setting out (in reasonable detail) the Applicable Contributions that have been provided in respect of a relevant Lot;
- (b) confirming that there are no further Contributions to be provided in accordance with the terms of the deed in respect of the relevant Lot; and
- (c) in a form capable of being relied on by third parties dealing with the Relevant Land Owner.

Completion means the stage in the construction of the Relevant Works when, in the reasonable discretion of the Council's Representative and notified under clause 10.6, the Relevant Works are complete except for minor omissions and minor defects which are non-essential and:

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

Conservation Management Plan means a document prepared by a Relevant Land Owner that:

- (a) identifies the State or local heritage significance of items located on the relevant Land; and
- (b) sets out policies and strategies for the retention of that significance; and
- (c) is prepared in accordance with the guidelines for the preparation of conservation management plans (if any) publicly issued from time to time by the Heritage Council.

Conservation Management Plan Standards means the provisions of a Conservation Management Plan that has been finalised in accordance with clause 8.1(a) of Schedule 4, as amended and current from time to time.

Construction Certificate means a 'construction certificate' as defined in the Act, granted in respect of the Development and arising from the Development Consent or a Stage 2 Development Consent.

Contributions means the aggregate of the:

- (a) Airspace Lot Contribution;
- (b) Heritage Conservation Contribution;
- (c) Lanes Development Contribution;
- (d) Minimum Non-Residential Floor Space Contribution;
- (e) Monetary Contribution;
- (f) Public Art Contribution;
- (g) Publicly Accessible Civic Space Contribution; and
- (h) Through-Site Link Contribution,

to be provided by the Land Owners at no cost or risk to Council and in accordance with this deed.

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

Council's Representative means the person specified in Schedule 2 who is duly authorised to give approval under this deed or such other person as notified by the Council from time to time.

Council Services means systems or apparatus for electricity, gas, drainage, sewerage, telecommunications or refuse disposal.

Covenant means a binding agreement in form and terms capable of being registered by the Registrar-General in the relevant folio of the Register and may include a public positive covenant, a provision in a strata management statement or other form of registrable document.

Customs House means the land known as 'Customs House', located at 31 Alfred Street, Circular Quay, Sydney NSW.

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

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

Development means the development of the Land for a mixed use development generally comprising the following elements:

- (a) the retention, conservation and management of the Buildings located on the Hinchcliff House Land and the 33 Alfred Street Land;
- (b) the retail, commercial and residential redevelopment of the Young and Loftus Street Land;
- (c) the extension of the existing tower Building located on the 50 Bridge Street Land and its integration with the Building located on the 33 Alfred Street Land; and
- (d) the construction of the Publicly Accessible Civic Space and the Through-Site Links,

to be completed in stages and in accordance with the Development Consent and each Stage 2 Development Consent but does not include any development the subject of a complying development certificate or development consent issued after each relevant Stage 2 Development Consent in respect of a Lot.

Development Application means a Stage 1 concept development application lodged pursuant to Section 83B of the Act, for the Development of the Land, that utilises the provisions of the LEP Amendment to allow for a Floor Space Ratio for the Building located on the 50 Bridge Street Land greater than if the LEP Amendment had not been made (but disregarding the operation of any amendments to the LEP or any New Law which come into effect after the date of this deed, other than in accordance with the LEP Amendment), 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 the Stage 1 consent granted to the Development Application for the Development, and includes all modifications made under section 96 of the Act to that consent.

Draft Conservation Management Plans means

- (a) the draft Conservation Management Plan prepared in respect of the 33 Alfred Street Land by Urbis, dated December 2012; and
- (b) the draft Conservation Management Plan prepared in respect of the Hinchcliff House Land by Urbis, dated November 2012.

Encumbered Land means the Lots affected by the Publicly Accessible Civic Space Easement, the Through-Site Links Easements, the Minimum Non-Residential Floor Space Restriction and the Lanes Development Restriction.

Estimated Amount has the meaning given in clause 15.2(b).

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

Floor Space Ratio has the meaning given in section 4.5(2) of the LEP as at the date of this deed.

Gallipoli Club Land means the land comprised in certificate of title folio identifier 1/87960 known as 12-14 Loftus Street, Sydney NSW.

Gallipoli Club VPA means the Planning Agreement dated on or about the date of this deed between the Council, The Gallipoli Memorial Club Limited (ACN 001 038 740) and AMP Capital Investors Limited (ACN 001 777 591) in its capacity as trustee of the AMP Capital Wholesale Office Fund (ABN 56 724 311 688).

Gross Floor Area has the meaning given in the LEP as at the date of this deed.

GST has the same meaning as in the GST Legislation.

GST Legislation means the *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 (as amended).

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 Column 2 of Schedule 6 (as amended by clause 1 or clause 2 of Schedule 6, or clause 15.2(b)) as varied from time to time in accordance with this deed.

Guarantee Certificate has the meaning given in clause 19.7(b).

Guaranteed Contributions means the following Applicable Contributions:

- (a) in respect of the Young and Loftus Street Land:
 - (i) provision of the Publicly Accessible Civic Space Contribution, being:
 - (A) the construction of the Publicly Accessible Civic Space in accordance with clause 5.1(a) of Schedule 4; and
 - (B) the creation and registration of an easement in favour of the Council over the part of the Young and Loftus Street Land on which the Publicly Accessible Civic Space is located, on terms generally in accordance with the Publicly Accessible Civic Space Easement, in accordance with 5.1(a) of Schedule 4; and
 - (ii) provision of the Through-Site Link Contribution, being:
 - (A) the construction of the Young Street and Loftus Street Link in accordance with clause 6.1(a) of Schedule 4; and

- (B) the creation and registration of an easement in favour of the Council over the part of the Young and Loftus Street Land on which the Young Street and Loftus Street Link is located, on terms generally in accordance with the Through-Site Link Easement, in accordance with 6.1(a) of Schedule 4;
- (b) in respect of the Hinchcliff House Land, provision of the Heritage Conservation Contribution, being:
 - (i) the finalisation of the Draft Conservation Management Plans in accordance with clause 8.1 of Schedule 4; and
 - (ii) the completion of the Heritage Conservation Works in accordance with clause 8.2 of Schedule 4.

Guarantor means AMP Capital Investors Limited (ACN 001 777 591) in its capacity as trustee of the AMP Capital Wholesale Office Fund (ABN 56 724 311 688) of Level 13, 50 Bridge Street, SYDNEY NSW 2000.

Heritage Conservation Contribution means (as the context requires):

- (a) the finalisation of the Draft Conservation Management Plans; and
- (b) the completion of the Heritage Conservation Works,

to be undertaken by the Land Owners in accordance with clause 8 of Schedule 4.

Heritage Conservation Works means the Conservation Works required to be completed on the Heritage Items located within the Precinct in accordance with the Development Consent or any Stage 2 Development Consent and the Conservation Management Plans finalised in accordance with clause 8.1(a) of Schedule 4, as amended and current from time to time.

Heritage Council means the Heritage Council of New South Wales constituted under the *Heritage Act 1977* (NSW).

Hinchcliff House Land means the land comprised in certificate of title folio identifiers 1/723381 and 1/104784 known as 5 - 7 Young Street, Sydney NSW.

Heritage Items means the Buildings located on the Hinchcliff House Land and the 33 Alfred Street Land.

Improvements means all structures, improvements, fixtures and equipment constructed, erected or installed from time to time (including but not limited to any support columns, foundations or footings constructed).

Land means the land described in Schedule 3 of this deed.

Land Owner means each person identified as such in the 'Parties' section on page 4 of this deed being the registered proprietors of the Land as at the date of this deed, and any other registered proprietor of the relevant part of the Land from time to time.

Land Owner's Representative means the person specified in Schedule 2 who is duly authorised to give and receive notices under this deed as agent for the Land Owners, or such other person as notified by the Land Owners (acting jointly) to Council from time to time.

Lanes Development Contribution means the Lanes Development Contribution to be undertaken by the Land Owners in accordance with clause 9 of Schedule 4.

Lanes Development Floor Space means 'lanes development floor space' within the meaning of the LEP, as amended by the LEP Amendment.

Lanes Development Restriction means the proposed instrument and terms of restriction on the use of land to be created over the those parts of the Young and Loftus Street Land that comprise Lanes Development Floor Space, under this deed in accordance with section 88B of the Conveyancing Act and set out in Schedule 13 or as amended with the consent of both Parties, providing that any individual fine grain street level premises provided in new and existing Buildings and laneways within the Young and Loftus Street Land as part of the Development, must:

- (a) each have a Gross Floor Area of less than or equal to 100 square metres, and
- (b) not have direct access to any other premises in the relevant Building, and
- (c) adjoin, and have direct access to, a lane (being a public road with a width of less than 6 metres); and
- (d) have a floor level no more than 5 metres above the existing ground level of the relevant lane; and
- (e) be used for the purpose of business premises, community facilities, entertainment facilities, food and drink premises, information and education facilities, places of public worship, pubs, indoor recreation facilities, a registered club or retail premises; and
- (f) must not be consolidated or otherwise varied in way that would cause one or more of the relevant premises to cease to satisfy each of the requirements set out in paragraph (a) to (e) above, without the prior written consent of the Council.

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.

Legal Challenge means any proceedings in which a declaration is sought that the LEP Amendment, any Development Consent, Stage 2 Development Consent and/or this deed 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.

LEP means *Sydney Local Environmental Plan 2012*.

LEP Amendment means the amendment to the LEP known as the 'Sydney Local Environmental Plan 2012 - Amendment - AMP Circular Quay Precinct', as contemplated by planning proposal PP_2013_SYDNE_007_00.

Lessee means any lessee who holds a registered lease over any part of the Land.

Lot means each lot or individual parcel comprising the Land.

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

Management Plan means the management plan for the management of the Through Site Links and Publicly Accessible Civic Space, to be prepared by the Relevant Land Owners and approved by the Council in accordance with clause 7(f) of Schedule 4.

Maximum Public Art Value means \$2,000,000 (excluding GST).

Minimum Non-Residential Floor Space Contribution means the Minimum Non-Residential Floor Space Contribution to be provided by the relevant Land Owners in accordance with clause 10 of Schedule 4.

Minimum Non-Residential Floor Space Restriction means the proposed instrument and terms of restriction on the use of land to be created over the Young and Loftus Street Land under this deed in accordance with section 88B of the Conveyancing Act and set out in Schedule 12 or as amended with the consent of both Parties, providing that a minimum of 40% of the total Gross Floor Area of all Buildings (new and existing) within the Young and Loftus Street Land and the Gallipoli Club Land must be provided as non-residential uses.

Monetary Contribution means the monetary contribution payable by the 50 Bridge Street Owners to the Council as calculated in accordance with Schedule 4, to be used by the Council in accordance with clause 5.2.

Mortgagee means any mortgagee, charge or financier of the Land Owners who holds a registered mortgage over any part of the Land.

New Law has the meaning given in clause 18.8.

Occupation Certificate means an 'occupation certificate' as defined in the Act, granted in respect of the Development and arising from the Development Consent or a Stage 2 Development Consent, and includes an interim Occupation Certificate.

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

Plan means the plan in Schedule 8.

Plan of Subdivision means:

- (a) a registered plan of subdivision under Division 3 of Part 23 of the Conveyancing Act and the Real Property Act;
- (b) a strata plan within the meaning of the *Strata Schemes (Freehold Development) Act 1973* (NSW); and
- (c) any form of dealing required by an Authority or the Land Owners to be registered with a plan of subdivision or strata plan regarding the creation of easements, covenants or other obligations.

Precinct means the precinct bordered by Loftus Street, Alfred Street, Bridge Street and Phillip Street, Sydney NSW, but excluding the carriageway of those streets.

Public Art means an artistic work, structure or piece, but excluding an architectural feature for a Building.

Public Art Contribution means the installation of the Public Art in accordance with clause 6 of Schedule 4.

Public Art Policy means the following policy documents as amended by the Council from time to time:

- (a) The City of Sydney Public Art Policy 2011;
- (b) The City Art Public Art Strategy 2011;
- (c) Guidelines for Public Art Acquisitions and Deaccessions 2010; and
- (d) Interim Guidelines for Public Art in Private Development 2006.

Public Art Value means the aggregate acquisition, construction and installation cost (calculated without a developer's margin) of the Public Art provided as part of the Public Art Contribution, as determined in accordance with clause 4 of Schedule 4.

Public Benefits means the public benefits which are to be provided as a result of the transfer of the Dedicated Land to Council and the creation of easements and restrictions on use over the Encumbered Land in favour of the Council, including the provision of recreation areas, lanes and streets (including an activated laneway network and fine grain uses) and Public Art.

Public Domain means land within the Zone owned by the Council, excluding:

- (a) the section of Alfred Street within public ownership between George Street and Loftus Street, Sydney; and
- (b) Jessie Street Gardens (Loftus Street, Sydney).

Publicly Accessible Civic Space means the part of the Land at the junction of Loftus Lane and the Young Street Arcade, shown as the 'Publicly Accessible Civic Space' on the Plan and limited in height and depth in accordance with clause 7(b) of Schedule 4 and having an indicative area of a minimum of 60m², subject to design resolution in accordance with the Stage 2 Development Applications in respect of the Young and Loftus Street Land, including as to precise location and shape, and which may include areas below any overhanging parts of the Buildings.

Publicly Accessible Civic Space Contribution means the construction of the Publicly Accessible Civic Space and the creation of the Publicly Accessible Civic Space Easement in accordance with clause 5 of Schedule 4.

Publicly Accessible Civic Space Easement means the proposed instrument and terms of easement to be created over the Young and Loftus Street Land under this deed in accordance with section 88B of the Conveyancing Act and set out in Schedule 10 or as amended with the consent of both Parties, providing for:

- (a) public access and usage rights over the Publicly Accessible Civic Space;

- (b) flexibility to relocate (but not reduce the area of) the Publicly Accessible Civic Space in any subsequent redevelopment of the Land; and
- (c) public access over the Publicly Accessible Civic Space area at appropriate times to cater for Building security and public liability management, and otherwise in accordance with the Management Plan.

Quantity Surveyor means a duly qualified quantity surveyor of at least five (5) years' experience in the assessment of building material and construction costs, appointed by the 50 Bridge Street Owners.

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

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

Registrar-General means the Registrar-General who maintains the Register.

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

Related Entity has the same meaning as in the *Corporations Act 2001* (Cth).

Release Event means an event listed in Column 4 of Schedule 6.

Relevant Building has the meaning given in clause 2.1 of Schedule 4.

Relevant Land Owner means each Land Owner required to deliver a Contribution as an Applicable Contribution.

Relevant Party has the meaning given in clause 16.7.

Relevant Trust has the meaning given in clause 16.7.

Relevant Works means (as the context requires):

- (a) the construction of the Heritage Conservation Works in accordance with the Heritage Conservation Contribution;
- (b) the construction of the Publicly Accessible Civic Space in accordance with the Publicly Accessible Civic Space Contribution;
- (c) the construction of the Young Street and Loftus Street Link in accordance with the Through-Site Links Contribution; or
- (d) the construction of the Young Street and Phillip Street Link in accordance with the Through-Site Links Contribution.

Revised Guarantee or Bond Amount has the meaning given in clause 1(a) of Schedule 6.

Section 61 Contribution means a contribution under section 94 of the Act that is authorised by section 61 of the *City of Sydney Act 1988* (NSW).

Stage means each stage of the Development which is the subject of a Stage 2 Development Consent.

Stage 2 Development Application means each subsequent detailed development application or applications lodged for a part of the Land under section 83B (1) of the Act pursuant to the Development Consent.

Stage 2 Development Consent means each development consent granted pursuant to a Stage 2 Development Application and includes all modifications made under section 96 of the Act to that consent.

Standards means the policies, procedures and standards for carrying out of the Heritage Conservation Works, Publicly Accessible Civic Space Contribution and Through-Site Links Contribution identified in Schedule 7.

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

Through-Site Links means (as the context requires):

- (a) the Young Street and Loftus Street Link; and
- (b) the Young Street and Phillip Street Link.

Through-Site Links Contribution means the construction of the Through-Site Links and the creation of the Through-Site Link Easements in accordance with clause 6 of Schedule 4.

Through-Site Link Easement means the proposed instrument and terms of easement to be created over the Young and Loftus Street Land (in respect of the Young Street and Loftus Street Link) and the 50 Bridge Street Land and 33 Alfred Street Land (in respect of the Young Street and Phillip Street Link) under this deed in accordance with section 88B of the Conveyancing Act and set out in Schedule 11 or as amended with the consent of both Parties, providing for:

- (a) public access and usage rights over the Through-Site Links;
- (b) flexibility to relocate (but not reduce the area of) the Through-Site Links in any subsequent redevelopment of the Land; and
- (c) public access over the Through-Site Links area at appropriate times to cater for Building security and public liability management, and otherwise in accordance with the Management Plan.

Transferee means the transferee of the whole of part of a Lot.

Trigger Development Consent means a development consent that approves the undertaking of Works on the Building on the 50 Bridge Street Land in a manner which allows for a Floor Space Ratio in respect of that Building greater than if the LEP Amendment had not been made (but disregarding the operation of any amendments to the LEP or any New Law which come into effect after the date of this deed, other than in accordance with the LEP Amendment), being either the Development Consent or a Stage 2 Development Consent.

Works means the works contemplated under the Development Consent or a Stage 2 Development Consent.

Works Amount means the value of the Relevant Works that is calculated in accordance with clause 8.5.

Young Street and Loftus Street Link means the through-site link between Young Street and Loftus Street, shown as the 'Young Street and Loftus Street Link' on the Plan and with a maximum indicative area as shown on the Through-Site Links Plan, subject to design resolution in accordance with the Stage 2 Development Applications in respect of the Young and Loftus Street Land, including as to its precise location.

Young Street and Phillip Street Link means the through-site link between Young Street and Phillip Street immediately adjacent to the southern façade of the Building located on the 33 Alfred Street Land, shown as the 'Young Street and Phillip Street Link' on the Plan and with a maximum indicative area as shown on the Through-Site Links Plan and a minimum width of 6 metres, subject to design resolution in accordance with the Stage 2 Development Applications in respect of the 50 Bridge Street Land and the 33 Alfred Street Land, including as to its precise location.

Young Street and Loftus Street Land means, each Lot comprising:

- (a) the Hinchcliff House Land;
- (b) the 9-13 Young Street Land;
- (b) the 15-17 Young Street Land;
- (c) the 2-10 Loftus Street Land; and
- (d) 16-20 Loftus Street Land.

Zone has the meaning given in clause 5.2(b).

2.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to **a body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;

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

3 OPERATION AND APPLICATION OF THIS DEED

3.1 Operation

- (a) Subject to clause 3.1(b), the provisions of this deed will commence upon the date that the LEP Amendment commences under section 34(5) of the Act, however the obligations of the Parties to deliver the Contributions will not arise until the dates or times specified in Column 2 of the in table in clause 1 of Schedule 4.

- (b) Prior to the date that the LEP Amendment commences under section 34(5) of the Act, the provisions of clause 2, clause 3, clause 7, clause 13, clause 14, clause 15, clause 16, clause 17 and clause 18 will apply.

3.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act, governed by subdivision 2 of Division 6 of Part 4 of the Act.

3.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

4 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

4.1 Application of Sections 94, 94A and 94EF of Act

For the purposes of section 93F(3)(d) of the Act, the Parties expressly agree that the application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4.2 Scope

This deed does not include mechanisms for the payment of, and does not in any way reduce, offset or negate the Land Owner's obligations to pay monies under:

- (a) section 61 of the *City of Sydney Act 1988* (NSW), subject to the operation of Table 1 in Schedule 1;
- (b) any affordable housing levy; and
- (c) any other statute or instrument that may apply to the Land or to any part of the Development.

5 CONTRIBUTIONS, STAGING AND ACKNOWLEDGEMENTS

5.1 Land Owners to provide Contributions

- (a) The Land Owners undertake to provide to the Council, at their cost and risk, the Contributions in accordance with the provisions of Schedule 4 and otherwise in accordance with the provisions of this deed.
- (b) For the avoidance of doubt, the obligation of each Land Owner to provide the Contributions extends only to the Applicable Contributions that relate to the part Land of which that Land Owner is the registered proprietor (being an **Applicable Lot**).

5.2 Monetary Contributions

- (a) Subject to this clause, the 50 Bridge Street Owners must pay the Monetary Contribution to Council by the dates or times specified in clause 1 of Schedule 4.
- (b) Subject to clause 5.2(c), the Council will, at its sole discretion, expend, use and apply the Monetary Contribution, as soon as it is reasonably practicable to do so, for the delivery of urban design upgrades within a zone defined as:
 - (i) the Precinct including, all civic spaces located within the boundaries of the Precinct and in front of Customs House and the northern boundary of the 33 Alfred Street Land;
 - (ii) the section of Alfred Street within public ownership between George Street and Loftus Street, Sydney; and
 - (iii) Macquarie Place Park (corner of Bridge Street and Loftus Street, Sydney) and Jessie Street Gardens (Loftus Street, Sydney),
 (the "**Zone**").
- (c) The Council agrees as soon as reasonably practicable after the payment of the Monetary Contribution and prior to the expenditure of the Monetary Contribution in accordance with clause 5.2(b), to consult in good faith with the Land Owners in relation to sequencing and final form of the urban design upgrades to be delivered in accordance with clause 5.2(b).
- (d) The parties expressly agree that the expenditure of an amount equal to or greater than the Monetary Contribution upon delivery of urban design upgrades within the Zone will be full and conclusive proof of the proper application of the Monetary Contribution. Without limiting this clause 5.2(d) and subject to the Council complying with its obligations under clause 5.2(c), the Land Owners may not bring any claim or action of any nature relating to:
 - (i) the design, sequencing or final form of the urban design upgrades, delivered in accordance with clause 5.2(b); or
 - (ii) the reasonableness of any cost incurred in the delivery of the urban design upgrades in accordance with clause 5.2(b).

5.3 Indicative Staging Plan

Prior to lodging the Development Application with the Council for approval, the Land Owners agree to prepare and provide the Council with an indicative staging plan, giving an overview of the proposed staging and timing for the completion of the various stages of the Development.

5.4 Heritage - Bennelong Stormwater Channel

The Parties acknowledge the presence of the 'Bennelong Stormwater Channel No.29.' as a heritage item located within the Precinct.

6 ENFORCEMENT

6.1 Land Owners to provide security

The Relevant Land Owners must provide the Guarantees to the Council in accordance with this clause 6.1 and Schedule 6, clause 8.4(a), clause 10.8(b), clause 10.8(c), clause 11.2 and clause 15.2(b) (as applicable).

6.2 Rights and remedies of the Council

The Relevant Land Owners expressly acknowledge and agree that the Council may make an appropriation from the Guarantees in accordance with clause 8.4(a), clause 10.8(b), clause 10.8(c), clause 11.3, clause 15.2(d) and clause 4(h) of Schedule 4 of this deed (as applicable), with the amount appropriated to be applied in accordance with those clauses.

6.3 Release of Guarantees

Subject to clause 11.2 (where applicable), if a Guarantee has not been expended by the corresponding Release Event in accordance with the provisions of this deed, then the Council will promptly return that Guarantee to the Relevant Land Owner on each corresponding Release Event.

6.4 Indemnity by the Land Owners

- (a) Each Land Owner indemnifies and releases the Council against all damage, expense, loss or liability of any nature suffered or incurred by the Council arising from its wilful or negligent act or omission (or any person engaged by it, including any contractor) in connection with the performance of its obligations under the terms of this deed, 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).
- (b) For the avoidance of doubt, the indemnity and release given under clause 6.4(a) is given by each Land Owner individually only, and a Land Owner is not required to indemnify or release the Council in respect of the acts or omissions of any other Land Owner. Nothing in this clause 6.4(b) affects the Guarantor's obligations under clause 19.

7 REGISTRATION AND RESTRICTION ON USE OF AIRSPACE LOT

7.1 Registration of deed

- (a) Each of the Land Owners undertakes, promptly after the date of execution of this deed, to obtain all consents to the registration of this deed on the title to the Land as are necessary and in particular the consent of any Mortgagee or Lessee registered on the certificate of title for each Lot.
- (b) Each Land Owner must promptly following execution of this deed, provide signed counterparts of the deed to the Council for execution by the Council;
- (c) Each Land Owner must promptly after the execution of this deed by the Council, produce a letter from their respective Mortgagees (if any) and Lessees (if any)

consenting to the registration of this deed on the title for each Lot that it owns and a copy of any production slip issued by the LPI as evidence that the Mortgagees (if any) have produced the relevant certificates of title for each Lot to the LPI for the purpose of registration of the deed and a bank cheque for the relevant registration fees. If any Lot is unencumbered by a Mortgagee, the Relevant Land Owner must produce the certificate of title for that Lot to the LPI and give a copy of the relevant production slip to the Council.

- (d) Each Relevant Land Owner must promptly comply with any requisitions that may be raised with regard to registration of the deed from the LPI.
- (e) Subject to clause 7.1(a), 7.1(b) and 7.4, the Council will register this deed on each relevant folio of the Register comprising the Land as soon as reasonably practicable, but in any event no later than 20 Business Days after the execution of this deed by the Council.
- (f) The Council will promptly notify the Land Owners following registration of this deed by the Council and forward the Land Owners a copy of this deed showing the relevant registration number.

7.2 Release and discharge of deed by Council

- (a) The Council must promptly do all things reasonably required by the Land Owners to release and discharge this deed from the title to each Lot comprising the Land, excluding the Airspace Lots (such that the deed is no longer registered by the Registrar-General under section 93H of the Act in relation to the Land) upon:
 - (i) in respect of each Lot (excluding the Airspace Lots), the Council's Representative being satisfied, acting reasonably, that the Relevant Land Owner has provided all Applicable Contributions under this deed in respect of the Applicable Lot; and
 - (ii) in respect of each Lot (excluding the Airspace Lots), the LEP Amendment or the LEP being repealed, amended or otherwise varied such that it is no longer possible to obtain a Trigger Development Consent or such that a Trigger Development Consent that has already been obtained is invalid or not capable of being acted upon.
- (b) Subject to the operation of clause 17.1(b)(iii)(D), the Parties agree that this deed must remain registered against the title of each Airspace Lot, following the creation of the Airspace Lots and dedication of the Airspace Lots to the Council in accordance with the Airspace Lot Contribution, regardless of whether or not the Relevant Land Owner has provided all Applicable Contributions under this deed in respect of the relevant Airspace Lot.

7.3 Interest in Land

The Land Owners represent and warrant that they are the legal and beneficial owners of the Land, or if the Land Owners own the Land in their capacity as trustees of a trust that they are registered as the proprietors of the Land in their capacity as the trustees of the relevant trust.

7.4 Caveat

- (a) Without limiting any other provision of this deed, until such time as the registration of this deed is completed, the Land Owners agree that Council may, at any time, lodge a caveat over each Lot precluding any dealing which is inconsistent with this deed.
- (b) If the Council lodges a caveat in accordance with clause 7.4(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 deed;
 - (ii) any plan of consolidation or subdivision contemplated, required or permitted under this deed or any development consent, which does not adversely affect the Council's rights under this deed or the delivery of the Contributions in accordance with this deed;
 - (iii) any other dealing contemplated, required or permitted under this deed or any development consent, which does not adversely affect the Council's rights under this deed or the delivery of the Contributions in accordance with this deed;
 - (iv) subject to clause 15, the transfer of any part of the Land to a Related Entity of a Land Owner or a trust or fund of which a Related Entity of the Land Owner is trustee, manager or responsible entity; or
 - (v) a mortgage over any Lot; or
 - (vi) a lease of any part of a Lot with a term not exceeding 25 years (including option periods); or
 - (vii) any other dealing which relates to the Land which does not adversely affect the Council's rights under this deed or the delivery of the Contributions in accordance with this deed.
- (c) Council must promptly do all things reasonably required to remove the caveat from the title of a Lot once this deed has been registered on that title in accordance with clause 7.1.

7.5 Interests of Lessees

- (a) Subject to clause 7.5(b), the Parties acknowledge that the obligations under this deed, including the obligation to deliver the Contributions, does not bind a Lessee of the Land.
- (b) For the avoidance of doubt, the Parties acknowledge that once registered, the obligations under the Airspace Lot Covenants, the Lanes Development Restriction, the Minimum Non-Residential Floor Space Restriction, the Publicly Accessible Civic Space Easement and the Through-Site Link Easement may bind a Lessee of the Land, in accordance with the terms of those instruments.

7.6 Certificates

- (a) If a Relevant Land Owner has provided all Applicable Contributions under this deed in respect of a relevant Lot, the Relevant Land Owner may request that the Council issue it with a Certificate.
- (b) If, after receiving a request for the issue of a Certificate in accordance with clause 7.6(a), the Council's Representative is satisfied (acting reasonably and without delay) that the Relevant Land Owner has provided all Applicable Contributions under this deed in respect of the relevant Lot, it must promptly issue a Certificate to the Relevant Land Owner.

7.7 Restriction on Use – Airspace Lot

- (a) Following the dedication and transfer of an Airspace Lot to the Council in accordance with clause 2 of Schedule 4, the Council (as owner of the Airspace Lot) for itself, its successors and every person who is entitled to an estate or interest in possession of the Airspace Lot or any part of it, unconditionally and irrevocably covenants with each Land Owner and the registered proprietor of the Gallipoli Club Land (subject to the operation of clause 7.7(e)), for the benefit of each Land Owner and the registered proprietor of the Gallipoli Club Land, their successors and every person who is entitled to an estate or interest in possession of the Land, the Gallipoli Club Land or any part of it from time to time, that:
 - (i) no Improvements of any kind may be erected or constructed, or remain erected or constructed on the Airspace Lot, except to the extent contemplated by the easements, positive covenants and restrictions on use contained in the Airspace Covenants registered on title to the Airspace Lots; and
 - (ii) no uses of any kind may be undertaken on the Airspace Lot, except for uses contemplated by the easements, positive covenants and restrictions on use contained in the Airspace Covenants registered on title to the Airspace Lots.
- (b) The Parties agree that the restriction on use given by the Council under clause 7.7(a) is a restrictive covenant:
 - (i) the benefit of which is intended to run with the ownership of the Land (excluding the Airspace Lots) and the Gallipoli Club Land (excluding any 'Airspace Lots' created in accordance with the provisions of the Gallipoli Club VPA); and
 - (ii) the burden of which is intended to run with the ownership of the Airspace Lots.
- (c) The restriction on use given by the Council in accordance with clause 7.7(a) may only be released, varied or modified with the consent of :
 - (i) each Land Owner (other than the registered proprietor of the Airspace Lot) and the registered proprietor of the Gallipoli Club Land; and

- (ii) the Council, or if the Council is no longer registered proprietor of the Airspace Lot, the registered proprietor of the Airspace Lot.
- (d) The Council agrees not to sell, dedicate or otherwise transfer an Airspace Lot without first procuring that the relevant purchaser or transferee ("**Incoming Party**") execute a deed with each Land Owner and the registered proprietor of the Gallipoli Club Land, on terms satisfactory to the Land Owners and the registered proprietor of the Gallipoli Club Land (acting reasonably and without delay), under which the Incoming Party gives a covenant for the benefit of each Land Owner and the registered proprietor of the Gallipoli Club Land, their successors and every person who is entitled to an estate or interest in possession of the Land or any part of it from time to time, on identical terms to the restriction on use given by the Council in accordance with this clause 7.7.
- (e) The restriction on use given by the Council in accordance with this clause 7.7 applies in respect of the Gallipoli Club Land and the registered proprietor of the Gallipoli Club Land (including its successors and every person who is entitled to an estate or interest in possession of the Gallipoli Club Land or any part of it from time to time) only to the extent that an 'Airspace Lot' (as defined in the Gallipoli Club VPA) has been dedicated and transferred to Council in accordance with the provisions of the Gallipoli Club VPA. If such a dedication and transfer has not occurred, all references to the Gallipoli Club Land and the registered proprietor of the Gallipoli Club Land are to be severed from this clause without affecting the enforceability, validity or legality of the remaining parts of this clause 7.7 which will continue in full force and effect.

8 APPROVAL OF RELEVANT WORKS

8.1 Design detail and refinement

The Parties acknowledge and agree that further design detail and refinement of the Relevant Works may be necessary in accordance with the terms of this deed, having regard to the following:

- (a) the extent to which the design of any part of the Relevant Works has been completed to the reasonable satisfaction of Council (in its capacity as a party to this deed and not as consent authority) at the date of execution of this deed;
- (b) conditions reasonably affecting the Relevant Works which were not reasonably capable of identification on or before the date of this deed;
- (c) the extent of any design refinement that may be identified in accordance with clause 8.2(a), clause 8.3 or clause 9;
- (d) to take into account a modification to any Development Consent or any Stage 2 Development Consent made and approved under section 96 of the Act; and
- (e) to accommodate the Standards in accordance with the reasonable requirements of the Council.

8.2 Relevant Land Owners to prepare and submit

- (a) The Relevant Land Owners must prepare the detailed description, including design drawings, for the Relevant Works in accordance with the Standards, 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 Relevant Land Owners make an application for the relevant Construction Certificate for the Relevant Works.

- (b) The Council's approval referred to in paragraph (a) of this clause 8.2 :
 - (i) is not to be unreasonably withheld; and
 - (ii) must be given to any works which are consistent with the Conservation Management Plan Standards or any development consent under the Act obtained in respect of the Relevant Works.

The Parties acknowledge that development consent under the Act may be required in respect of the Relevant Works and that the operation of this clause 8.2 shall not be construed as limiting or fettering in any way the discretion of the Council as consent authority under the Act in relation to the provision of such development consent.

8.3 Notice of plans

The Council must promptly (and in any event within 40 days of submission) give the Relevant Land Owners notice whether or not the design, drawings and description of the Relevant Works prepared under clause 8.2(a) are satisfactory. If the design or description are not satisfactory having regard to the Standards and, if applicable, the Conservation Management Plan Standards, then the Council must identify the further information, or modifications, (as the case may be) which are required so that the Relevant Works comply with the Standards and, if applicable, the Conservation Management Plan Standards. The Relevant Land Owners must promptly amend the proposed design to take into account the comments made by the Council under this clause 8.3. The Council must act reasonably in relation to this clause 8.3, and may not require the Relevant Land Owners to modify the design, drawings and description of Relevant Works to the extent that such works are consistent with the Conservation Management Plan Standards or any development consent under the Act obtained in respect of the Relevant Works.

8.4 If the Relevant Land Owners do not prepare plans for the Relevant Works

- (a) If the Relevant Land Owners:
 - (i) do not prepare plans in accordance with clause 8.2(a); or
 - (ii) do 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 Relevant Works comply with the Standards,

then, subject to clause 8.4(b), the Council may make an appropriation from the Guarantee for the purposes of carrying out the Relevant Works.

- (b) Before exercising the right conferred in clause 8.4(a) the Council must:
 - (i) give notice to the Relevant Land Owners 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 Relevant Land Owners 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 Relevant Land Owner grants the Council a licence for such period as is necessary for the Council to carry out, or procure the carrying out, of the Relevant Works.

8.5 Valuation of Relevant Works

The Relevant Land Owner responsible for delivering a component of the Relevant Works under this deed, 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 (excluding GST) of the Relevant Works ("**Works Amount**"). The Council (acting reasonably) may:

- (a) reject items included within that Quantity Surveyor's estimate which are not directly related to the Relevant 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; or
- (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 details of the Works Amount provided to Council under this clause 8.5 are for the purpose of ascertaining the relevant Guarantee Amounts only and that the Council does not have a right to request amendment to any Relevant Works on the basis of the relevant Works Amount.

9 FINAL DESIGN OF THE RELEVANT WORKS

9.1 Preparation of the plans and specifications

The Relevant Land Owners must complete construction drawings in accordance with the design for the Relevant Works 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 Relevant Land Owners, approve, vary or direct the Relevant Land Owners to vary the construction design drawings for the Relevant Works so as to reflect:

- (a) the Standards;
- (b) the Conservation Management Plan Standards;
- (c) a deviation or discrepancy from the plans approved under clause 8;
- (d) any standards, or specifications for the material selection or methodology, adopted by Council from time to time, provided that any direction given under this clause 9.2(d) does not significantly increase:

- (i) the cost of that element of the Relevant 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 Development Consent or Stage 2 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 Relevant Land Owners must:

- (a) to the extent practicable and using reasonable endeavours, comply with any direction in respect of the design and implementation of the Relevant Works; or
- (b) if the determination is considered to be unreasonable, or impracticable, notify a dispute with that determination in accordance with clause 13 of this deed.

10 CONSTRUCTION OF THE RELEVANT WORKS

10.1 Insurance

Each Relevant Land Owner must:

- (a) procure that public liability insurance is maintained in respect of the Relevant Works, with an insurer approved by the Council acting reasonably, with the Council identified as an interested party, for an amount not less than \$20,000,000 covering all aspects of the Relevant Works and submit a copy of the certificate of insurance to the Council before the commencement of the construction of the Relevant Works;
- (b) procure that all other reasonably necessary and prudent insurance policies are maintained in respect of the Relevant Works including:
 - (i) construction insurance in relation to the Relevant Works;
 - (ii) insurance against death or injury to persons employed or otherwise engaged in relation to the undertaking of the Relevant Works; and
 - (iii) any other insurances required at law; and
- (c) procure that the insurances in clauses 10.1(a) and 10.1(b) are maintained until the expiration of the Defects Liability Period.

10.2 Approvals and consents

- (a) The Relevant Land Owners must (at its cost) obtain all relevant Approvals for the Relevant Works whether from the Council or any other relevant Authority, including any necessary road opening permit.
- (b) Before commencing the Relevant Works, the Relevant Land Owners must give to the Council copies of all Approvals for the Relevant Works (other than any Development Consent or Stage 2 Development Consent).

10.3 Construction Work

The Relevant Land Owners must (at their cost):

- (a) carry out and complete the Relevant Works in accordance with all Approvals relating to the Relevant Works (including the approval by Council of plans and any other information submitted under this deed); and
- (b) ensure that all Relevant Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this deed 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 Relevant Works; and
- (d) comply with any reasonable directions from the Council in respect of the construction of the Relevant Works.

10.4 Inspection of Relevant Works

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

- (a) inspect the Relevant Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Land Owners Representative in good faith of any material or significant defect, error or omission relating to the construction or installation of the Relevant 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 Relevant Works Completion

When, in the opinion of the Relevant Land Owners, the Relevant Works have reached Completion, the Relevant Land Owners 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 Relevant Works have 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 Relevant Works; and
- (c) at least three (3) sets of the "as built" drawings of the Relevant Works, including one set in electronic format.

10.6 Final inspection by Council

The Council must inspect the Relevant Works within 10 days of notification under clause 10.5 and must by notice to the Relevant Land Owners 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 Relevant Land Owner's responsibility to correct minor Defects or minor omissions, whether or not these are identified by the Council.

10.7 Date of Completion of Relevant Works

Each Relevant Land Owner must ensure that the Relevant Works relating to the Land of which it is the registered proprietor is capable of reaching Completion on or before the date specified in Column 2 of the table in clause 1 of this Schedule 4.

10.8 Non-completion of Relevant Works

- (a) If the Relevant Land Owners so request, the Council may permit the Relevant Land Owners not to complete the Relevant Works (or part of them) by issuing a notice in writing to the Relevant Land Owners, expressly stating that completion of the items identified in that notice is not required in fulfilment of this deed.
- (b) If the Council permits the Relevant Land Owners not to complete the Relevant 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 Relevant Works (or any part of them).
- (c) If the Relevant Land Owner fails to complete the whole of the Relevant Works in the form and to the standards required under any Development Consent, any Stage 2 Development Consent or this deed, then Council in its discretion may either:
 - (i) complete the Relevant Works; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in this deed or any Development Consent or any Stage 2 Development Consent,

and may recover all costs of and reasonably incidental to that work from the Relevant Land Owners. 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 Relevant Land Owners as a debt due and owing.

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

11 DEFECTS LIABILITY PERIOD

11.1 Defects in the Relevant Works

If the Council notifies the Relevant Land Owners of a Defect in the Relevant Works within the Defects Liability Period, then the Relevant Land Owners 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 provided in connection with the Relevant Works an amount equal to 10% of that Guarantee as security for the performance by the Relevant Land Owners of their obligations under this clause 11 and the Relevant Land Owners must make any necessary arrangements to allow that to occur.

11.3 Application of Security

- (a) If the Relevant Land Owners do not rectify any Defect in the Relevant 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:
 - (i) rectify the Defect in the Relevant Works:
 - (ii) may make an appropriation from the Guarantee retained in accordance with clause 11.2 for the costs of and arising from the rectification; and
 - (iii) (to the extent that the costs exceed the Guarantee held) may recover the costs from the Relevant Land Owners as a debt due and owing.
- (b) If the Council determines to rectify any Defects in the Relevant Works under this clause 11.3, the Relevant Land Owners 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 EXPENDITURE BY THE COUNCIL

12.1 Expenditure by the Council

If the Council carries out the Relevant Works under clause 8.4 or 10.8, then the Council:

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

12.2 Debt due and owing to the Council

If Council expends more money than is secured by the relevant Guarantee in either carrying out or in rectifying the Relevant Works (whether that expenditure is incurred under clause 12.1 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 Relevant Land Owners.

13 DISPUTE RESOLUTION

13.1 Reference to Dispute

A Party must not commence any court proceedings relating to a dispute unless it complies with this clause 13.

13.2 Written notice of dispute

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

13.3 Attempt to resolve

On receipt of notice under clause 13.2, the Parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, arbitration, expert evaluation or other techniques agreed by them.

13.4 Mediation

If the Parties do not agree within 21 Business Days of receipt of notice under clause 13.2 (or any further period agreed in writing by them) as to:

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

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

13.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 13.2 then any Party which has complied with the provisions of this clause 13 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

13.6 Not use information

The Parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 13 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process

undertaken under this clause 13 for any purpose other than in an attempt to settle the dispute, except to the extent that such information or documents is otherwise publicly available or otherwise came into the possession of a Party other than during the dispute resolution process.

13.7 No prejudice

This clause 13 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

14 GST

14.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 14 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 14.
- (c) In this clause 14, "**monetary consideration**" means any consideration expressed as an amount of money, "**non-monetary consideration**" means any consideration that is not monetary consideration, and "**non taxable supply**" means a supply that is not a taxable supply.
- (d) Unless otherwise expressly stated, all consideration to be provided under any other provision of this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 14.
- (e) A reference to something done (including a supply made) by a Party includes a reference to something done by any entity through which that Party acts. A reference to the GST payable by an entity or the input tax credit entitlement of an entity includes a reference to the GST payable or input tax credit entitlement of the representative member of any GST group to which that entity may belong.

14.2 Intention of the parties

Subject to clause 14.4, the Parties intend that:

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

14.3 Reimbursements and similar payments

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

14.4 GST payable

- (a) Subject to clause 14.5, if GST is payable in relation to a supply made under or in connection with this deed, then any Party ("**Recipient**") that is required to provide consideration to another Party ("**Supplier**") for that supply must pay an additional amount to the Supplier equal to the amount of that GST ("**GST Amount**") at the same time as any other consideration is to be first provided for that supply, or if later, within 5 Business Days of the Supplier providing a valid tax invoice to the Recipient.
- (b) The Recipient need not pay the GST Amount under clause 14.4(a) until the Supplier provides a tax invoice to the Recipient.

14.5 Variation of GST

If the GST payable in relation to a supply made under or in connection with this deed varies from the GST Amount paid by the Recipient under clause 14.4, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 14.5 is deemed to be a payment, credit or refund of the GST Amount payable under clause 14.4. Where there is an adjustment event, the Supplier must issue an adjustment note to the Recipient as soon as the Supplier becomes aware of the adjustment event.

14.6 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the taxable supply to which clause 14.4 applies is a taxable supply made by the Recipient (the "**Recipient Supply**"), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 14.4 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 14.4 (or the time at which such GST Amount would have been payable in accordance with clause 14.4 but for the operation of clause 14.6(a)).

14.7 No merger

This clause 14 will not merge on completion or termination of this deed.

15 ASSIGNMENT AND NOVATION**15.1 Consent**

No Party may assign the rights or benefits of this deed to any person except in accordance with clause 15.2, 15.3 and 15.4 or otherwise with the consent of the other Parties.

15.2 50 Bridge Street Owners' right to Transfer Land

- (a) The 50 Bridge Street Owners must not sell or transfer to another person the whole or part of the 50 Bridge Street Land, for so long as this deed remains registered on the title of the 50 Bridge Street Land in accordance with section 93H of the Act.

- (b) Notwithstanding clause 15.2(a) the 50 Bridge Street Owners may sell or transfer the whole or any part of the 50 Bridge Street Land (as the case may be) to a Transferee if prior to the proposed sale or transfer the 50 Bridge Street Owners proposing to sell or transfer the 50 Bridge Street Land (the “**Disposing Owners**”):
- (i) either:
- (A) satisfies the Council (acting reasonably and without delay) that the Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Disposing Owners under this deed; or
- (B) procures the relevant Transferee to provide a Guarantee in an amount equal to the estimated value of the Applicable Contributions still to be provided by the Disposing Owners under this deed, regardless of whether the date or time for the provision of those Applicable Contributions has occurred (as specified in Column 2 of the table in clause 1 of Schedule 4), as calculated and certified by a Quantity Surveyor, including the estimated value of the Monetary Contribution as at the date of the proposed sale or transfer calculated in accordance with clause 3(c) of Schedule 4 (“**Estimated Amount**”). For the avoidance of doubt, if the Disposing Owners only own part of the 50 Bridge Street Land, the Disposing Owners are only required to provide a Guarantee for a proportion of the Estimated Amount equal to proportion of the 50 Bridge Street Land being sold or transferred by the Disposing Owners; and
- (ii) satisfy the Council acting reasonably and without delay that it is not in material breach of its obligations under this deed.
- (c) The Land Owners will pay the Council’s reasonable costs and expenses incurred under this clause 15.2.
- (d) The Council may make an appropriation from the Guarantee if the Transferee is unable to provide the Applicable Contributions in accordance with this deed, in an amount equal to the value of those Applicable Contributions as calculated and certified by a Quantity Surveyor. Any amount appropriated by the Council under this clause 15.2(d) must be applied only towards:
- (i) the costs and expenses incurred by the Council rectifying any default by the Relevant Land Owner under this deed; or
- (ii) the Applicable Contributions that the Transferee was unable to provide.

15.3 Land Owners’ rights to transfer Land

- (a) This clause 15.3 does not apply to the 50 Bridge Street Owners in respect of the 50 Bridge Street Land, clause 15.2 applies in these circumstances.
- (b) The Land Owners must not sell or transfer to another person the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.

- (c) Notwithstanding clause 15.3(b), a Land Owner may sell or transfer the whole or any part of the Land (as the case may be) to a Transferee if prior to the proposed sale or transfer the relevant Land Owner satisfies the Council (acting reasonably and without delay) that it is not in material breach of its obligations under this deed.
- (d) The Land Owners will pay the Council's reasonable costs and expenses incurred under this clause 15.3.

15.4 Transfer of land between Land Owner and Related Entities

- (a) The provisions of clauses 15.2 and 15.3 do not apply where a Land Owner transfers any part of the Land it owns to any of its Related Entities.
- (b) The Related Entity receiving the transfer under clause 15.4(a) must notify the Council in writing within 20 Business Days of the transfer indicating that the transfer has occurred and identifying that the Land, or any part thereof, has been transferred.

15.5 Substitution of Security

As soon as is practicable after the Land Owners have any entered into an assignment, transfer or novation in accordance with clause 15.1, clause 15.2, clause 15.3 or clause 15.4 and the relevant Transferee provides a new Guarantee in terms acceptable to the Council in accordance with this deed in substitution for an existing Guarantee, the Council must, if so directed by the Land Owner that provided the existing Guarantee, promptly release and return the existing Guarantee to that Land Owner.

16 CAPACITY

16.1 General warranties

Each Party warrants to each other Party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant Party in accordance with its terms;
- (b) unless otherwise stated and subject to clause 16.3, clause 16.4 and clause 16.5, it has not entered into this deed in the capacity of trustee of any trust; and
- (c) where a Parties enters into this deed in the capacity of trustee of any trust or as a responsible entity of a registered managed investment scheme or both, it has the power to enter into this deed, including with respect to the Guaranteed Contributions (as applicable).

16.2 Power of attorney

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

16.3 Limitation of Trustee's capacity and liability – ACPPT Office Pty Limited

- (a) ACPPT Office Pty Limited (ACN 108 662 031) ("**ACPP**") enters into this deed only in its capacity as trustee of the ACPPT Office Trust and in no other capacity. A liability

arising under or in connection with this deed is limited to, and can be enforced against ACPP only to the extent to which it can be satisfied out of property of the ACPP Office Trust out of which ACPP is actually indemnified for the liability. This limitation of liability applies despite any other provision of this deed and extends to all liabilities and obligations of ACPP in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.

- (b) The Parties other than ACPP may not sue ACPP in any capacity other than as trustee of the ACPP Office Trust, including seeking the appointment of a receiver (except in relation to property of the ACPP Office Trust), a liquidator, an administrator, or any similar person to ACPP or prove in any liquidation, administration or arrangement of or affecting ACPP (except in relation to property of the ACPP Office Trust).
- (c) ACPP is not obliged to do or refrain from doing anything under this deed (including, without limitation, incur any liability) unless ACPP's liability is limited in the same manner as set out in clauses (a) and (b) above.
- (d) The provisions of this clause 16.3 do not apply to any obligation or liability of ACPP to the extent that it is not satisfied because under the trust deed or constitution governing the ACPP Office Trust or by operation of law, there is a reduction in the extent of ACPP's indemnification out of the assets of the ACPP Office Trust, as a result of ACPP's fraud, negligence or breach of trust.
- (e) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of ACPP in a way which exposes ACPP to any personal liability, and no act or omission of any such person will be considered fraud, negligence or breach of trust of ACPP for the purpose of clause 16.3(d).

16.4 Limitation of Trustee's capacity and liability – AMP Capital Investors Limited

- (a) AMP Capital Investors Limited (ACN 001 777 591) ("**AMPCI**") enters into this deed only in its capacity as trustee of the AMP Capital Wholesale Office Fund and in no other capacity. A liability arising under or in connection with this deed is limited to, and can be enforced against AMPCI only to the extent to which it can be satisfied out of property of the AMP Capital Wholesale Office Fund out of which AMPCI is actually indemnified for the liability. This limitation of liability applies despite any other provision of this deed and extends to all liabilities and obligations of AMPCI in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) The Parties other than AMPCI may not sue AMPCI in any capacity other than as trustee of the AMP Capital Wholesale Office Fund, including seeking the appointment of a receiver (except in relation to property of the AMP Capital Wholesale Office Fund), a liquidator, an administrator, or any similar person to AMPCI or prove in any liquidation, administration or arrangement of or affecting AMPCI (except in relation to property of the AMP Capital Wholesale Office Fund).
- (c) AMPCI is not obliged to do or refrain from doing anything under this deed (including, without limitation, incur any liability) unless AMPCI's liability is limited in the same manner as set out in clauses (a) and (b) above.

- (d) The provisions of this clause 16.4 do not apply to any obligation or liability of AMPCI to the extent that it is not satisfied because under the trust deed or constitution governing the AMP Capital Wholesale Office Fund or by operation of law, there is a reduction in the extent of AMPCI's indemnification out of the assets of the AMP Capital Wholesale Office Fund, as a result of AMPCI's fraud, negligence or breach of trust.
- (e) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of AMPCI in a way which exposes AMPCI to any personal liability, and no act or omission of any such person will be considered fraud, negligence or breach of trust of AMPCI for the purpose of clause 16.4(d).

16.5 Limitation of Trustee's capacity and liability – Kent Street Pty Limited as trustee of the Sydney Cove Trust

- (a) This clause 16.5 applies in respect of Kent Street Pty Limited (ACN 006 794 654) in its capacity as Land Owner of the 33 Alfred Street Land and in respect of the liabilities and obligations under this deed arising in respect of the 33 Alfred Street Land.
- (b) Kent Street Pty Limited (ACN 006 794 654) (in this clause 16.5, "**Kent Street**") enters into this deed only in its capacity as trustee of the Sydney Cove Trust and in no other capacity. A liability arising under or in connection with this deed is limited to, and can be enforced against Kent Street only to the extent to which it can be satisfied out of property of the Sydney Cove Trust out of which Kent Street is actually indemnified for the liability. This limitation of liability applies despite any other provision of this deed and extends to all liabilities and obligations of Kent Street in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The Parties other than Kent Street may not sue Kent Street in any capacity other than as trustee of the Sydney Cove Trust, including seeking the appointment of a receiver (except in relation to property of the Sydney Cove Trust), a liquidator, an administrator, or any similar person to Kent Street or prove in any liquidation, administration or arrangement of or affecting Kent Street (except in relation to property of the Sydney Cove Trust).
- (d) Kent Street is not obliged to do or refrain from doing anything under this deed (including, without limitation, incur any liability) unless Kent Street's liability is limited in the same manner as set out in clauses (c) and (d) above.
- (e) The provisions of this clause 16.5 do not apply to any obligation or liability of Kent Street to the extent that it is not satisfied because under the trust deed or constitution governing the Sydney Cove Trust or by operation of law, there is a reduction in the extent of Kent Street's indemnification out of the assets of the Sydney Cove Trust, as a result of Kent Street's fraud, negligence or breach of trust.
- (f) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of Kent Street in a way which exposes Kent Street to any personal liability, and no act or omission of any such person will be considered fraud, negligence or breach of trust of Kent Street for the purpose of clause 16.5(e).

16.6 Limitation of Trustee's capacity and liability – Kent Street Pty Limited as trustee of the Loftus Street Trust

- (a) This clause 16.6 applies in respect of Kent Street Pty Limited (ACN 006 794 654) in its capacity as Land Owner of the Young and Loftus Street Land and in respect of the liabilities and obligations under this deed arising in respect of the Young and Loftus Street Land.
- (b) Kent Street Pty Limited (ACN 006 794 654) (in this clause 16.6, "**Kent Street**") enters into this deed only in its capacity as trustee of the Loftus Street Trust and in no other capacity. A liability arising under or in connection with this deed is limited to, and can be enforced against Kent Street only to the extent to which it can be satisfied out of property of the Loftus Street Trust out of which Kent Street is actually indemnified for the liability. This limitation of liability applies despite any other provision of this deed and extends to all liabilities and obligations of Kent Street in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) The Parties other than Kent Street may not sue Kent Street in any capacity other than as trustee of the Loftus Street Trust, including seeking the appointment of a receiver (except in relation to property of the Loftus Street Trust), a liquidator, an administrator, or any similar person to Kent Street or prove in any liquidation, administration or arrangement of or affecting Kent Street (except in relation to property of the Loftus Street Trust).
- (d) Kent Street is not obliged to do or refrain from doing anything under this deed (including, without limitation, incur any liability) unless Kent Street's liability is limited in the same manner as set out in clauses (c) and (d) above.
- (e) The provisions of this clause 16.6 do not apply to any obligation or liability of Kent Street to the extent that it is not satisfied because under the trust deed or constitution governing the Loftus Street Trust or by operation of law, there is a reduction in the extent of Kent Street's indemnification out of the assets of the Loftus Street Trust, as a result of Kent Street's fraud, negligence or breach of trust.
- (f) No attorney, agent, receiver or receiver and manager appointed has authority to act on behalf of Kent Street in a way which exposes Kent Street to any personal liability, and no act or omission of any such person will be considered fraud, negligence or breach of trust of Kent Street for the purpose of clause 16.6(e).

16.7 Application of Clause 16.8

Clause 16.8 applies if a Party to this deed (other than a Party which has its own specific limitation of liability clause in this deed) is a Party in its capacity either as a trustee of a trust or as a responsible entity of a registered managed investment scheme or both (the "**Relevant Party**") and in entering into or becoming a Party to this deed, the Relevant Party has either disclosed to the other Parties or cited its capacity and the details of the trust or registered managed investment scheme (as the case may be) in respect of which it acts as trustee or responsible entity ("**Relevant Trust**").

16.8 Limitation

- (a) The Relevant Party enters into this deed only in its capacity as responsible entity or trustee (as applicable) of the Relevant Trust and in no other capacity. A liability arising under or in connection with this deed is limited to, and can be enforced against the Relevant Party only to, the extent to which it can be satisfied out of the assets of the Relevant Trust out of which the Relevant Party is actually indemnified for the liability. This limitation of the Relevant Party's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Relevant Party in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) No party may sue the Relevant Party in any capacity other than as responsible entity or trustee (as applicable) of the Relevant Trust, including to seek the appointment of a receiver (except in relation to property of the Relevant Trust), a liquidator, an administrator, or any similar person to the Relevant Party or prove in any liquidation, administration or arrangement of or affecting the Relevant Party (except in relation to property of the Relevant Trust).
- (c) The Relevant Party is not obliged to do or refrain from doing anything under this deed (including, without limitation, incur any liability) unless the Relevant Party's liability is limited in the same manner as set out in clauses (a) and (b) above.
- (d) The provisions of this clause 16.8 do not apply to any obligation or liability of the Relevant Party to the extent that it is not satisfied because under the trust deed or constitution governing the Relevant Trust or by operation of law there is a reduction in the extent of the Relevant Party's indemnification out of the assets of the Relevant Trust, as a result of the Relevant Party's fraud, negligence or breach of trust.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this deed has authority to act on behalf of the Relevant Party in a way which exposes the Relevant Party to any personal liability, and no act or omission of any such person will be considered fraud, negligence or breach of trust of the Relevant Party for the purpose of clause 16.8(d).

16.9 Several Liability

- (a) Any agreement, covenant, indemnity, release, representation or warranty under this deed by the Land Owners binds them individually only.
- (b) For the avoidance of doubt, the obligation of each Land Owner to provide the Contributions extends only to the Applicable Contributions that relate to Land of which that Land Owner is the registered proprietor. A Land Owner is not liable for another Land Owner failing to provide a Contribution or otherwise breaching the terms of this deed, and a Land Owner is not required to indemnify or release the Council in respect of the acts or omissions of any other Land Owner.

17 OBLIGATIONS IF LEGAL CHALLENGE

17.1 Obligations if Legal Challenge

- (a) The Parties agree that in the event of a Legal Challenge:

- (i) the Parties or their nominated representatives will meet within 10 business days of the notice of the Legal Challenge to establish and agree as to the obligations under this deed; and
 - (ii) the obligations of the Land Owners under this deed, including the obligations to provide the Applicable Contributions, are suspended until the earlier of:
 - (A) the date the Legal Challenge is resolved, such that there is no effective Court declaration or order that the LEP Amendment, any Development Consent, Stage 2 Development Consent and/or this deed is invalid; or
 - (B) the date that the Parties agree to the extent of the obligations to performed under this deed, despite the ongoing nature of the Legal Challenge and execute necessary documentation to effect any such agreement; or
 - (C) in respect of a Legal Challenge in relation to the Development Consent or a Stage 2 Development Consent, the date that a fresh Development Consent or fresh Stage 2 Development Consent is granted following a Legal Challenge where there is an effective Court declaration or order that any Development Consent or Stage 2 Development Consent is invalid.
- (b) If following a Legal Challenge there is an effective Court declaration or order that the LEP Amendment, any Development Consent, Stage 2 Development Consent and/or this deed is invalid, such that the Development can no longer be completed as contemplated by the Development Consent, then the Parties agree that:
- (i) the obligations of the Land Owners under this deed, including the obligations to provide the Applicable Contributions, are suspended;
 - (ii) subject to 17.1(b)(iii), to the extent that Applicable Contributions have been provided to the Council in accordance with this deed, the Land Owners agree that the Council cannot be required to return those Applicable Contributions or otherwise compensate the Land Owners in relation to the provision of those Applicable Contributions; and
 - (iii) if an Airspace Lot has been transferred to the Council as part of the Airspace Lot Contribution prior to the 50 Bridge Owner being able to undertake Works on the Building located on the 50 Bridge Street Land in a manner which:
 - (A) allows for a Floor Space Ratio in respect of that Building greater than if the LEP Amendment had not been made (but disregarding the operation of any amendments to the LEP or any New Law which come into effect after the date of this deed, other than in accordance with the LEP Amendment); and
 - (B) utilises the Floor Space Ratio from the Lot from which the Airspace Lot was created in accordance with the provisions of the LEP Amendment,

then the Council agrees to re-transfer or procure the re-transfer of the relevant Airspace Lot to the Land Owner of the Lot from which the Airspace Lot was created:

- (C) within 20 Business Days of a request in writing; and
- (D) for a consideration of \$1 for each Airspace Lot and free of any encumbrances and affectations that were created after the date that the Council acquired that Airspace Lot,

provided that the 50 Bridge Street Owners enter into a deed with the Council confirming that the Floor Space Ratio from the Lot from which the Airspace Lot was created will not be permitted to be used in respect of the Building located on the 50 Bridge Street Land as part of the Development .

18 GENERAL PROVISIONS

18.1 Entire deed

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

18.2 Variation

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

18.3 Waiver

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

18.4 Further assurances

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests that are necessary or desirable to give full effect to the arrangements contained in this deed.

18.5 Time for doing acts

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

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

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

18.6 Governing law and jurisdiction

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

18.7 Severance

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

18.8 Compliance with Laws

If a Law is changed or a new Law comes into force (both referred to as "**New Law**") and the Land Owners 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 deed then, to the extent only that the relevant obligation is required under both the New Law and this deed, compliance with this deed will constitute compliance with the New Law and compliance with the New Law will constitute compliance with this deed.

18.9 Requirements under section 93F of the Act

The Parties acknowledge and agree that the table in Schedule 1 provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

18.10 Preservation of existing rights

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

18.11 No merger

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

18.12 Counterparts

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

18.13 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and

- (b) no Party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other Party's credit.

18.14 Good faith

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

18.15 No fetter

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

18.16 Explanatory note

The Parties agree that the Explanatory Note must not be used to assist in construing this deed.

18.17 Expenses and Taxes

- (a) The Land Owners must pay their own and the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this deed.
- (b) The Land Owners must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Land Owners must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed including any stamp duty that may be payable by the Council in respect of Land transferred to an Authority will be paid as contemplated by Schedule 4.
- (d) The Land Owners must provide the Council with bank cheques in respect of the Council's costs pursuant to clauses 18.17(a) and (b).
 - (i) where the Council has provided the Land Owners with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Council has not provided the Land Owners with prior written notice of the sum of such costs prior to execution, within 30 Business Days of written demand by the Council for payment.

18.18 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.
- (c) If a Party gives the other Party 10 business days' notice of a change of its postal address, 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.
- (d) 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.
- (e) Each Land Owner appoints the Land Owner's Representative as its agent, for the sole purpose of giving and receiving notices under this deed, in accordance with the instructions of and agreements between the Land Owners. However, any notices or communications from a Land Owner override those from the Land Owner's Representative if they are inconsistent.

19 Guarantee and Indemnity

19.1 Consideration

Subject to clause 19.8, the Guarantor gives the guarantee and indemnity in this clause 19 in consideration of the Council agreeing to enter into this deed at the request of the Land Owners. The Guarantor acknowledges the receipt of valuable consideration from the Council for the Guarantor incurring obligations and giving rights under this clause 19.

19.2 Guarantee

Subject to clause 19.8, the Guarantor unconditionally and irrevocably guarantees to the Council the due and punctual performance and observance by the Relevant Land Owners of

their obligation to deliver the Guaranteed Contributions under and in accordance with the provisions of this deed.

19.3 Indemnity

Subject to clause 19.8, as a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Council against any liability or loss arising from, and any costs, charges or expenses incurred in connection with a Relevant Land Owner breaching its obligations to deliver a Guaranteed Contribution under and in accordance with the provisions of this deed. It is not necessary for the Council to incur expense or make payment before enforcing that right of indemnity.

19.4 Enforcement

The Guarantor waives any right it has of first requiring the Council to commence proceedings or enforce any other right against a Relevant Land Owner or any other person before claiming under this clause 19.

19.5 Rights of the Council are protected

The liabilities of the Guarantor under this clause 19 and the rights of the Council under this clause 19 are not affected by anything which might otherwise affect them at law or in equity including one or more of the following:

- (a) the Council granting time or other indulgence to, compounding or compromising with or releasing a Relevant Land Owner;
- (b) acquiescence, delay, acts, omissions or mistakes on the part of the Council;
- (c) any transfer of a right of the Council;
- (d) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor;
- (e) any person named as Guarantor not executing or not executing effectively this deed;
or
- (f) a liquidator disclaiming this deed.

19.6 Costs

The Guarantor agrees to pay or reimburse the Council on demand for the Council's costs, charges and expenses in making, enforcing and doing anything in connection with the guarantee and indemnity in this clause 19 including legal costs and expenses on a full indemnity basis.

19.7 Release

- (a) The Parties agree that the guarantee and indemnity given in accordance with this clause 19, is released and terminated to the extent that the Relevant Land Owner or the Guarantor has provided all Guaranteed Contributions in respect of an Applicable Lot.

- (b) If a Relevant Land Owner or the Guarantor has provided all Guaranteed Contributions under this deed in respect of a relevant Lot, the Relevant Land Owner or the Guarantor may request that the Council issue it with a certificate under this clause 19.7 ("**Guarantee Certificate**"):
- (i) setting out (in reasonable detail) the Guaranteed Contributions that have been provided in respect of the relevant Lot;
 - (ii) confirming that there are no further Guaranteed Contributions to be provided in accordance with the terms of this deed in respect of the relevant Lot; and
 - (iii) in a form capable of being relied on by third parties dealing with the Guarantor or the Relevant Land Owner.
- (c) If, after receiving a request for the issue of a Guarantee Certificate in accordance with clause 19.7, the Council's Representative is satisfied (acting reasonably and without delay) that the Relevant Land Owner or the Guarantor has provided all Guaranteed Contributions under this deed in respect of the relevant Lot, it must promptly issue a Guarantee Certificate to the Relevant Land Owner or the Guarantor (as applicable).

19.8 Limitation of Liability

Despite any other provision in this clause 19 the Council agrees that the liability of the Guarantor under this clause 19 is limited in the manner set out in clause 16.4 of this deed.

EXECUTED as a deed.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 3)

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

REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning instrument and/or development application – (section 93F(2))</p> <p>The Land Owners have:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development 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) Yes</p> <p>(b) Yes</p> <p>(c) Yes</p>
<p>Description of land to which this deed applies – (section 93F(3)(a))</p>	The whole of the Land
<p>Description of change to the environmental planning instrument to which this deed applies and/or the development to which this deed applies – (section 93F(3)(b))</p>	The LEP Amendment and the Development.
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</p>	See Schedule 4
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	<p>The application of section 94 of the Act is excluded to the extent that any Section 61 Contributions payable in relation to the Development exceed 1% of the cost of the Development (as calculated in accordance with the Central Sydney Development Contributions Plan 2013).</p> <p>The application of section 94A is excluded.</p>
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	The application of section 94EF of the EP&A Act is not excluded in respect of this deed and for the avoidance of doubt, contributions (if any) under section 94EF will be required to be paid.
<p>Consideration of benefits under this deed if section 94 applies – (section 93F(5))</p>	Not applicable

Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 13.
Enforcement of this deed – (section 93F(3)(g))	See clause 6, clause 7, clause 19, clause 2.2 of Schedule 4, clause 5.2 of Schedule 4, clause 6.2 of Schedule 4 and clause 11 of Schedule 4.
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 18.15

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

SCHEDULE 2

Address for Service (clause 2.1)

COUNCIL

Contact: Director City Planning, Development and Transport

Address: Town Hall House
465 Kent Street, SYDNEY NSW 2000

Facsimile No: (02) 9265 9222

COUNCIL'S REPRESENTATIVE: [#insert]

LAND OWNERS

AMP CAPITAL INVESTORS LIMITED in its capacity as trustee of the AMP Capital Wholesale Office Fund (ABN 56 724 311 688)

Contact: [#insert]

Address: Level 13
50 Bridge Street, SYDNEY NSW 2000

Facsimile No: (02) [#insert]

ACPP OFFICE PTY LIMITED in its capacity as trustee of the ACPP Office Trust (ABN 28 226 741 631)

Contact: [#insert]

Address: Level 24, AMP Building
33 Alfred Street, SYDNEY NSW 2000

Facsimile No: (02) [#insert]

KENT STREET PTY LIMITED in its capacity as trustee of the Sydney Cove Trust (ABN 31 149 459 738)

Contact: [#insert]

Address: Level 24, AMP Building
33 Alfred Street, SYDNEY

Facsimile No: (02) [#insert]

KENT STREET PTY LIMITED in its capacity as trustee of the Loftus Street Trust (ABN 93 573 234 985)

Contact: [#insert]

Address: Level 24, AMP Building
33 Alfred Street, SYDNEY

Facsimile No: (02) **[#insert]**

LAND OWNER'S **[#insert]**
REPRESENTATIVE:

SCHEDULE 3

Land (clause 2.1) and Applicable Contributions (clause 7.2)

1 Lots proposed for Development

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Description	Lot Number	Deposited Plan	Folio Identifier	Relevant Land Owner	Applicable Contributions
50 Bridge Street Land	2	1073376	2/1073376	AMP Capital Investors Limited in its capacity as trustee of the AMP Capital Wholesale Office Fund and ACPD Office Pty Limited in its capacity as trustee of the ACPD Office Trust	<ul style="list-style-type: none"> • Monetary Contribution • Public Art Contribution • Through-Site Link Contribution - Young Street and Phillip Street Link
33 Alfred Street Land	1	1073376	1/1073376	Kent Street Pty Limited in its capacity as trustee of the Sydney Cove Trust	<ul style="list-style-type: none"> • Heritage Conservation Contribution – finalisation of Draft Conservation Management Plan • Heritage Conservation Contribution – completion of Heritage Conservation Works – 33 Alfred Street Land • Through-Site Link Contribution - Young Street and Phillip Street Link (but only to the extent that Young Street and Phillip Street Link is located on the 33 Alfred Street Land)

Hinchcliff House Land	1	723381	1/723381	Kent Street Pty Limited in its capacity as Trustee of the Loftus Street Trust	<ul style="list-style-type: none"> Airspace Lot Contribution Heritage Conservation Contribution – finalisation of Draft Conservation Management Plan Heritage Conservation Contribution – completion of Heritage Conservation Works – Hinchcliff House Land Lanes Development Contribution (but only to the extent that Lanes Development Floor Space is located on the Hinchcliff House Land) Minimum Non-Residential Floor Space Contribution
	1	104784	1/104784	Kent Street Pty Limited in its capacity as Trustee of the Loftus Street Trust	
9-13 Young Street Land	1 to 4	134760	Auto consol. 11987-71	Kent Street Pty Limited in its capacity as Trustee of the Loftus Street Trust	<ul style="list-style-type: none"> Airspace Lot Contribution Publicly Accessible Civic Space Contribution (but only to the extent the Publicly Accessible Civic Space is located on the 9-13 Young Street Land) Through-Site Link Contribution - Young Street and Loftus Street Link (but only to the extent the Young Street and Loftus Street Link is located on the 9-13 Young Street Land) Lanes Development Contribution (but only to the extent that Lanes Development Floor Space is located on the 9-13 Young Street Land) Minimum Non-Residential Floor Space Contribution

15-17 Young Street Land	1	810463	1/810463	Kent Street Pty Limited in its capacity as Trustee of the Loftus Street Trust	<ul style="list-style-type: none"> • Airspace Lot Contribution • Publicly Accessible Civic Space Contribution (but only to the extent the Publicly Accessible Civic Space is located on the 15-17 Young Street Land) • Through-Site Link Contribution - Young Street and Loftus Street Link (but only to the extent the Young Street and Loftus Street Link is located on the 15-17 Young Street Land) • Lanes Development Contribution (but only to the extent that Lanes Development Floor Space is located on the 15-17 Young Street Land) • Minimum Non-Residential Floor Space Contribution
2-10 Loftus Street Land	501	709624	501/709624	Kent Street Pty Limited in its capacity as Trustee of the Loftus Street Trust	<ul style="list-style-type: none"> • Airspace Lot Contribution • Lanes Development Contribution (but only to the extent that Lanes Development Floor Space is located on the 2-10 Loftus Street Land) • Minimum Non-Residential Floor Space Contribution
16-20 Loftus Street Land	1	134861	1/134861	Kent Street Pty Limited in its capacity as Trustee of the Loftus Street Trust	<ul style="list-style-type: none"> • Airspace Lot Contribution • Publicly Accessible Civic Space Contribution (but only to the extent the Publicly Accessible Civic Space is located on the 16-20 Loftus Street Land) • Through-Site Link Contribution - Young Street

					<p>and Loftus Street Link (but only to the extent the Young Street and Loftus Street Link is located on the 16-20 Loftus Street Land)</p> <ul style="list-style-type: none">• Lanes Development Contribution (but only to the extent that Lanes Development Floor Space is located on the 16-20 Loftus Street Land)• Minimum Non-Residential Floor Space Contribution
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SCHEDULE 4

Contributions (clause 5)

1 Contributions

Each Land Owner undertake to provide the Applicable Contributions in accordance with this Schedule and in the manner set out in the table below:

	Column 1	Column 2
Item	Contributions	Delivery Event and timing for delivery
1	Airspace Lot Contribution	Dedication of the Airspace Lot above each Relevant Building to the Council at no cost to the Council in accordance with clause 2 of this Schedule 4 – prior to the first Occupation Certificate being issued in respect of the Relevant Building in relation to the relevant Stage 2 Development Consent.
2	Monetary Contribution	Payment of the Monetary Contribution in accordance with clause 3 of this Schedule 4 – prior to any Construction Certificate being issued in respect of Works to be undertaken to the Building located on the 50 Bridge Street Land pursuant to a Trigger Development Consent, giving rise to development rights pursuant to the Development Consent.
3	Public Art Contribution	Installation of the Public Art in accordance with clause 4 of this Schedule 4 – prior to the first Occupation Certificate being issued in respect of Works undertaken to the Building located on the 50 Bridge Street Land pursuant to a Trigger Development Consent or at an earlier stage as agreed by the Parties.
4	Publicly Accessible Civic Space Contribution	Construction of the Publicly Accessible Civic Space and Registration of the Publicly Accessible Civic Space Easement in accordance with clause 5 of this Schedule 4 – prior to the first Occupation Certificate being issued for the Building located on the Lot over which the Publicly Accessible Civic Space Easement is to be granted.

5	Through-Site Link Contribution- Young Street and Loftus Street Link	Construction of the Young Street and Loftus Street Link and Registration of the Through-Site Link Easement in accordance with clause 6 of this Schedule 4 – prior to the first Occupation Certificate being issued for the Building located on the Lot over which the relevant Through-Site Link Easement is to be granted.
6	Through-Site Link Contribution - Young Street and Phillip Street Link	Construction of the Young Street and Phillip Street Link and Registration of the Through-Site Link Easement in accordance with clause 6 of this Schedule 4 – prior to the first Occupation Certificate being issued for the Building located on the 50 Bridge Street Land (over which the relevant Through-Site Link Easement is to be granted), in respect of Works undertaken pursuant to a Trigger Development Consent.
7	Heritage Conservation Contribution – finalisation of Draft Conservation Management Plan	Finalisation and endorsement or approval of the Draft Conservation Management Plans in accordance with clause 8.1 of this Schedule 4 – prior to the first Construction Certificate being issued in respect of Works to be undertaken to the Building located on the 50 Bridge Street Land pursuant to a Trigger Development Consent.
8(a)	Heritage Conservation Contribution – completion of Heritage Conservation Works – Hinchcliff House Land	Completion of the Heritage Conservation Works in accordance with clause 8.2 of this Schedule 4 – prior to the first Occupation Certificate being issued in respect of Works undertaken to the Building located on the 50 Bridge Street Land pursuant to a Trigger Development Consent.
8(b)	Heritage Conservation Contribution – Completion of Heritage Conservation Works – 33 Alfred Street Land	Completion of the Heritage Conservation Works in accordance with clause 8.2 of this Schedule 4 – prior to the first Occupation Certificate being issued in respect of Works undertaken to the Building located on the 50 Bridge Street Land pursuant to a Trigger Development Consent.

9	Lanes Development Contribution	Registration of the Lanes Development Restriction in accordance with clause 9 of this Schedule 4 – prior to the first Occupation Certificate being issued for each Building located on a Lot over which the Lanes Development Restriction is to be registered.
10	Minimum Non-Residential Floor Space Contribution	Registration of the Minimum Non-Residential Floor Space Contribution Restriction in accordance with clause 10 of this Schedule 4 – prior to the first Occupation Certificate being issued for each Building located on a Lot over which the Minimum Non-Residential Floor Space Contribution Restriction is to be registered.

2 Airspace Lot Contribution

2.1 Dedication of the Airspace Lot

- (a) Each Relevant Land Owner must, at no cost to the Council, carry out all steps required to dedicate and transfer the Airspace Lots to the Council in accordance with clause 2.1 of this Schedule 4 (“**Airspace Lot Contribution**”).
- (b) The Parties agree that the dedications and transfers referred to in clause 2.1(a) of this Schedule 4 will occur in stages, with the Airspace Lot immediately above a Building that is the subject of the Development and located on a Lot that is specified as being subject to the Airspace Lot Contribution in Column 6 of the table in Schedule 3 (“**Relevant Building**”), being dedicated or transferred in accordance with the timing specified in Column 2 of the table in clause 1 of this Schedule 4.
- (c) Each Relevant Land Owner agrees to:
- (i) lodge a Stage 2 Development Application, prepare and lodge an application for a subdivision certificate and register a Plan of Subdivision to create the Airspace Lot above each Relevant Building; and
 - (ii) register the Airspace Lot Covenants; and
 - (iii) deliver to the Council (or to the Council’s Representative):
 - (A) a form of transfer for the value of \$1 in respect of the land comprising the Airspace Lot above the Relevant Building, executed by the Relevant Land Owner and in registrable form; and
 - (B) the certificates of titles for the Airspace Lot immediately above the Relevant Building,

and must take any other necessary action to give effect to the transfer of the title of the Airspace Lot above the Relevant Building to the Council free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) but excluding the Airspace Lot Covenants and any additional easements or Covenants created with the Plan of Subdivision, in accordance with the timing specified in Column 2 of the table in clause 1 of this Schedule 4.

- (d) The Council must:
 - (i) not object to the registration of the Airspace Lot Covenants on the title to each Airspace Lot;
 - (ii) accept the transfer of each Airspace Lot subject to the Airspace Lot Covenants; and
 - (iii) provide its consent as land owner of any of the Airspace Lots to the registration of the Airspace Lot Covenants.
- (e) The Relevant Land Owners must promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the registration of a Plan of Subdivision or transfer of the Airspace Lots pursuant to clause 2.1(c) of this Schedule 4.
- (f) The Relevant Land Owners will pay all rates and taxes owing in respect of each Airspace Lot up to and including the date that the Relevant Land Owners deliver the form of transfer and certificates of title for the Airspace Lot pursuant to clause 2.1(c) of this Schedule 4.

2.2 Compulsory acquisition

- (a) If a Land Owner does not procure the transfer of an Airspace Lot in accordance with clause 2.1(c) of this Schedule 4, the Council may compulsorily acquire the Airspace Lot in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* for the amount of \$1.
- (b) Before exercising the right conferred in clause 2.2(a), Council must:
 - (i) give written notice to the Relevant Land Owner to rectify the noncompliance with clause 2.1(c) of this Schedule 4 within 40 business days of receipt of the written notice; and
 - (ii) allow the Relevant Land Owners to rectify the non-compliance with clause 2.1(c) of this Schedule 4 within 40 business days of receipt of the written notice referred to in clause 2.2(b)(i).
- (c) The Land Owners and the Council agree that:
 - (i) clause 2.2(a) of this Schedule 4 is an agreement between the Land Owners and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and

- (ii) in clause 2.2(a) of this Schedule 4, the Land Owners and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (d) Each Relevant Land Owner indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any other person, other than a Land Owner, in respect of a compulsory acquisition of an Airspace Lot from the Land which it owns, undertaken in accordance with clause 2.2(a) of this Schedule 4.

2.3 Reimbursement of Council's Costs

Each Relevant Land Owner must reimburse the Council, promptly on demand, an amount equivalent to all reasonable costs incurred by the Council in acquiring an Airspace Lot immediately above a Lot which it owns pursuant to clause 2.2 of this Schedule.

3 Monetary Contribution

- (a) Subject to clause 3(b) of this Schedule 4, the 50 Bridge Street Owners must pay the Monetary Contribution in accordance with the following formula:

$$M = X - A$$

Where:

M = Monetary Contribution

X = 1% of the Capital Investment Value determined in accordance with clause 3(c) below.

A = The value of the Public Art Contribution as agreed between the parties in accordance with clause 4 to this Schedule 4.

- (b) The Monetary Contribution must be paid in accordance with the timing specified in Column 2 of the table in clause 1 of this Schedule 4.
- (c) The Capital Investment Value is to be determined as at the date of the payment of the Monetary Contribution as follows:
 - (i) an estimate of the Capital Investment Value of each Stage, based on the works contemplated under each relevant Stage 2 Development Consent and associated Stage 2 Development Application; plus
 - (ii) an estimate of the Capital Investment Value in respect of the remaining components of the Development that are not the subject of a Stage 2 Development Consent, based on the works contemplated under the Development Consent and Development Application in respect of those components.

4 Public Art Contribution

- (a) The 50 Bridge Street Owners will provide Public Art to be located in the Public Domain or within the Publicly Accessible Civic Space or the Through-Site Links, with a Public Art Value up to the Maximum Public Art Value, in accordance with this clause 4 (“**Public Art Contribution**”). Any provision of Public Art as part of the Public Art Contribution must be approved by the Council in accordance with this clause 4.
- (b) Prior to the payment of the Monetary Contribution, the 50 Bridge Street Owners will provide the Council with a proposal for the provision of Public Art within Land in the Precinct as part of the Public Art Contribution, for approval by the Council. The proposal must include:
- (i) a description of the Public Art proposed;
 - (ii) the proposed location of the Public Art, noting that, the Public Art is to be located in the Public Domain or within the Publicly Accessible Civic Space or the Through-Site Links;
 - (iii) where possible given the type of Public Art that is the subject of the proposal, an irrevocable offer to dedicate the Public Art to the Council follow its installation; and
 - (iv) the estimated Public Art Value and documentation supporting this value.

The Council must promptly consider each proposal for the provision of Public Art and must not unreasonably withhold its approval to any proposal which satisfies the criteria in clauses 4(b)(i) to 4(b)(iv) above and is otherwise in accordance with the Public Art Policy. In providing its approval under this clause 4(b) the Council must advise the 50 Bridge Street Owners whether it not it agrees to the Public Art Value set out in the relevant proposal. If the Council does not agree to the proposed Public Art then this dispute will be resolved in accordance with clause 13.

- (c) If the Public Art Value as determined in accordance with clause 4(b) is less than the Maximum Public Art Value then the 50 Bridge Street Owners agree to pay the balance of the difference between the Maximum Public Art Value and Public Art Value on the same date as the payment of the Monetary Contribution.
- (d) The balance of the difference between the Maximum Public Art Value and the Public Art Value as referred to in clause 4(c) is to be retained by the Council and expended on the delivery of urban design upgrades.
- (e) A proposal must be submitted to the Council for approval in accordance with clause 4(b) whether or not a separate development application under the Act is required for the installation of the Public Art.
- (f) If the Council approves a proposal in accordance with clause 4(b) of this Schedule 4, the 50 Bridge Street Owners must not commission and install the relevant Public Art until it has obtained a development consent, where such development consent is required.

- (g) Any Public Art approved in accordance with clause 4(b) is to be installed in accordance with the timing specified in Column 2 of the table in clause 1 of this Schedule 4 and following its installation must be dedicated to Council, but only if an irrevocable offer to dedicate the Public Art to the Council has been made in accordance with clause 4(b)(iii) and the Council has accepted that offer.
- (h) The 50 Bridge Street Owners expressly acknowledge and agree that the Council may make an appropriation from the relevant Guarantee if the 50 Bridge Street Owners fail to install any approved Public Art.

5 Publicly Accessible Civic Space Contribution

5.1 Publicly Accessible Civic Space Contribution

- (a) The Relevant Land Owners must (at their cost):
 - (i) construct the Publicly Accessible Civic Space in a good and workmanlike manner, and otherwise in accordance with the provisions of this deed dealing with Relevant Works; and
 - (ii) create and register an easement in favour of the Council over the part of Young and Loftus Street Land on which the Publicly Accessible Civic Space is located on terms generally in accordance with the Publicly Accessible Civic Space Easement,

by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4 (the “**Publicly Accessible Civic Space Contribution**”).
- (b) The Relevant Land Owners must comply with any reasonable directions by Council or Council’s Representative in respect of the creation and registration of the easement in accordance with clause 5.1(a)(ii) of this Schedule 4.

5.2 Compulsory acquisition

- (a) If a Land Owner does not create and register an easement in favour of the Council with clause 5.1(a)(ii) of this Schedule 4, the Council may compulsorily acquire an easement over the Publicly Accessible Civic Space on terms generally in accordance with the Publicly Accessible Civic Space Easement in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* for the amount of \$1.
- (b) Before exercising the right conferred in clause 5.2(a), Council must:
 - (i) give written notice to the Relevant Land Owner to rectify the noncompliance with clause 5.1(a)(ii) of this Schedule 4 within 40 business days of receipt of the written notice; and
 - (ii) allow the Relevant Land Owners to rectify the non-compliance with clause 5.1(a)(ii) of this Schedule 4 within 40 business days of receipt of the written notice referred to in clause 5.2(b)(i).
- (c) The Land Owners and the Council agree that:

- (i) clause 5.2(a) of this Schedule 4 is an agreement between the Land Owners and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in clause 5.2(a) of this Schedule 4, the Land Owners and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (d) Each Relevant Land Owner indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any other person, other than a Land Owner, in respect of a compulsory acquisition of an easement from the Land which it owns, undertaken in accordance with clause 5.2(a) of this Schedule 4.

6 Through-Site Link Contribution

6.1 Through-Site Link Contribution

- (a) The Relevant Land Owners must (at their cost):
- (i) construct each Through-Site Links in a good and workmanlike manner, and otherwise in accordance with the provisions of this deed dealing with Relevant Works; and
 - (ii) create and register an easement in favour of the Council over the part of the Land on which the relevant Through-Site Link is located on terms generally in accordance with the Through-Site Link Easement,

by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4 (the “**Publicly Accessible Civic Space Contribution**”).
- (b) The Relevant Land Owners must comply with any reasonable directions by Council or Council’s Representative in respect of the creation and registration of the easement in accordance with clause 6.1(a)(ii) of this Schedule 4.

6.2 Compulsory acquisition

- (a) If a Land Owner does not create and register an easement in favour of the Council with clause 6.1(a)(ii) of this Schedule 4, the Council may compulsorily acquire an easement over the relevant Through-Site Link on terms generally in accordance with the Through-Site Link Easement in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) for the amount of \$1.
- (b) Before exercising the right conferred in clause 6.2(a), Council must:
- (i) give written notice to the Relevant Land Owner to rectify the noncompliance with clause 6.1(a)(ii) of this Schedule 4 within 40 business days of receipt of the written notice; and

- (ii) allow the Relevant Land Owners to rectify the non-compliance with clause 6.1(a)(ii) of this Schedule 4 within 40 business days of receipt of the written notice referred to in clause 6.2(b)(i).
- (c) The Land Owners and the Council agree that:
 - (i) clause 6.2(a) of this Schedule 4 is an agreement between the Land Owners and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in clause 6.2(a) of this Schedule 4, the Land Owners and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (d) Each Relevant Land Owner indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) to any other person, other than a Land Owner, in respect of a compulsory acquisition of an easement from the Land which it owns, undertaken in accordance with clause 6.2(a) of this Schedule 4.

7 Airspace Lots, Easements and Restrictions on Use

The Parties expressly agree that, despite any other provision of this deed:

- (a) the final dimensions of the Airspace Lots, the Through-Site Link Easements and Publicly Accessible Civic Space Easement are subject to any Stage 2 Development Consent and survey and may be created by one or more Plans of Subdivision;
- (b) the Through-Site Link Easements and Publicly Accessible Civic Space Easement are to be created:
 - (i) limited in depth to the top of the paving (unless otherwise agreed to allow for Council Services); and
 - (ii) limited in height, if located outside to the underside of any overhanging Building or if located inside a Building, limited to the height of the ceiling; and
 - (iii) to include only airspace,
- (c) the Through-Site Link Easement, Publicly Accessible Civic Space Easement, Minimum Non-Residential Floor Space Restriction and Lanes Development Restriction are not in registrable form and amendments may be agreed between the Parties that do not substantially affect the terms of the relevant instrument but are required or considered appropriate to enable the Through-Site Link Easement, Publicly Accessible Civic Space Easement, Minimum Non-Residential Floor Space Restriction and Lanes Development Restriction to be registered;
- (d) prior to registration of the Through-Site Link Easement, Publicly Accessible Civic Space Easement, Minimum Non-Residential Floor Space Restriction and Lanes Development Restriction pursuant to this deed, the parties may agree to consolidate

the terms of these instruments into one or more instruments for registration with one or more Plans of Subdivision of the Land;

- (e) if a strata management statement or building management statement is registered in respect to any part of the Land, the Council may by agreement with the members of the relevant scheme decline to be a member of any building management committee or it may be excused from any such meetings without affecting quorum; and
- (f) within a reasonable period from the date of registration of both the Through-Site Link Easements and Publicly Accessible Civic Space Easements, the Land Owners which own the land affected by the Through-Site Link Easements and Publicly Accessible Civic Space Easements will prepare and submit the Management Plan for approval by the Council. The Parties must, acting reasonably and in good faith, finalise and agree the terms of the Management Plan, on terms which permit access during usual business hours within the Precinct and which enable the relevant Land Owners to block access to the Through-Site Link Easements and Publicly Accessible Civic Space Easements at appropriate times after hours to cater for Building security and public liability management. The Council must not unreasonably withhold its approval to any Management Plan prepared in accordance with this clause 7(f).

8 Heritage Conservation Contribution

8.1 Heritage Conservation Contribution – finalisation of Draft Conservation Management Plan

- (a) Each Relevant Land Owner must (at its own cost):
 - (i) finalise the Draft Conservation Management Plan that relates to the Lots which it owns;
 - (ii) in respect of the Building located on the Hinchcliff House Land, being an item of State heritage significance, procure the endorsement of the final Conservation Management Plan prepared in accordance with clause 8.1(a)(i) by the Heritage Council under section 38A of the *Heritage Act 1977* (NSW); and
 - (iii) in respect of the Building located on the 33 Alfred Street Land, being an item of local heritage significance, obtain approval of the terms of the final Conservation Management Plan accordance with clause 8.1(a)(i) from the Council,

by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4.

- (b) The Council must act reasonably and without delay in approving any Conservation Management Plan in accordance with clause 8.1(a)(iii) and must provide written notice to the Relevant Land Owner once the terms of the Conservation Management Plan have been approved. The Council may not withhold its approval to a Conservation Management Plan in accordance with clause 8.1(a)(iii) if such a Conservation Management Plan is in substantially the same form as the Draft Conservation Management relating to the Applicable Lot.

- (c) The Parties acknowledge that the Conservation Management Plan finalised and endorsed or approved in accordance with clause 8.1(a) and clause 8.1(b) may be subsequently amended in accordance with its terms, and that additional or replacement Conservation Management Plans may be prepared and approved or endorsed relation to any one or more of the Applicable Lots without the need for variation of this deed. References in this deed to a finalised Conservation Management Plan are references to the version of the finalised Conservation Management Plan as amended and current from time to time.

8.2 Heritage Conservation Contribution – completion of Heritage Conservation Works

Each Relevant Land Owner must (at its own cost) complete the Heritage Conservation Works in respect of each Applicable Lot, in a good and workmanlike manner, and otherwise in accordance with the provisions of this deed dealing with Relevant Works (unless expressly stated otherwise) by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4.

9 Lanes Development Contribution

- (a) The Relevant Land Owners must create and register the Lanes Development Restriction in favour of the Council over those parts of the Young and Loftus Street Land that comprise Lanes Development Floor Space, on terms generally in accordance with the Lanes Development Restriction by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4 ("**Lanes Development Contribution**").
- (b) The Relevant Land Owners must comply with any reasonable directions by Council or Council's Representative in respect of the creation and registration of the restriction on the use of land in accordance with clause 9(a) of this Schedule 4.

10 Minimum Non-Residential Floor Space Contribution

- (a) The Relevant Land Owners must create and register a restriction on the use of land in favour of the Council over the Young and Loftus Street Land and the Gallipoli Club Land on terms generally in accordance with the Minimum Non-Residential Floor Space Restriction by the date or time specified in Column 2 of the table in clause 1 of this Schedule 4 ("**Minimum Non-Residential Floor Space Contribution**").
- (b) The Relevant Land Owners must comply with any reasonable directions by Council or Council's Representative in respect of the creation and registration of the restriction on the use of land in accordance with clause 10(a) of this Schedule 4.

11 Compulsory Acquisition – Lanes Development Contribution and Minimum Non-Residential Floor Space Contribution

- (a) If a Land Owner does not create and register a restriction on use in favour of the Council in accordance with clause 9 or clause 10 of this Schedule 4, the Council may compulsorily acquire a restriction on use over the relevant part of the Young and Loftus Street Land or Gallipoli Club Land (as applicable and as contemplated by clause 9 or clause 10 of this Schedule 4) on terms generally in accordance with the Lanes Development Restriction or the Minimum Non-Residential Floor Space

Restriction (as applicable) in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* for the amount of \$1.

- (b) Before exercising the right conferred in clause 11(a), Council must:
 - (i) give written notice to the Relevant Land Owner to rectify the noncompliance with clause 9 or clause 10 of this Schedule 4 (as applicable) within 40 business days of receipt of the written notice; and
 - (ii) allow the Relevant Land Owners to rectify the non-compliance with clause 9 or clause 10 of this Schedule 4 (as applicable) within 40 business days of receipt of the written notice referred to in clause 11(b)(i).
- (c) The Land Owners and the Council agree that:
 - (i) clause 11(a) of this Schedule 4 is an agreement between the Land Owners and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and
 - (ii) in clause 11(a) of this Schedule 4, the Land Owners and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (d) Each Relevant Land Owner indemnifies and agrees to keep indemnified the Council against all claims made against the Council if the Council must pay compensation under Part 3 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)* to any other person, other than a Land Owner, in respect of a compulsory acquisition of a restriction on use from the Land which it owns, undertaken in accordance with clause 11(a) of this Schedule 4.

SCHEDULE 5 – NOT USED

SCHEDULE 6

Guarantees (clause 6.1)

Column 1	Column 2	Column 3	Column 4
Guarantee	Value	Date to be provided by the Relevant Land Owner	Release Event
Public Art	The Public Art Value determined in accordance with clause 4 of Schedule 4.	On payment of the Monetary Contribution.	The date the Public Art is installed in a manner satisfactory to the Council's Representative (acting reasonably and without delay)
Publicly Accessible Civic Space Contribution	The estimated cost of the construction of the Publicly Accessible Civic Space, as at the date of provision of the Guarantee, as calculated and certified by a Quantity Surveyor.	Prior to the issue of a Construction Certificate in respect of the Stage 2 Development Consent that includes approval for the construction of the Publicly Accessible Civic Space.	Subject to clause 11.2, the date the Council's Representative is satisfied (acting reasonably and without delay) that Completion of the construction of the Publicly Accessible Civic Space has occurred and the Publicly Accessible Civic Space Easement is registered in accordance with clause 5 of Schedule 4.
Through-Site Link Contribution - Young Street and Loftus Street Link	The estimated cost of the construction of the Young Street and Loftus Street Link, as at the date of provision of the Guarantee, as calculated and certified by a Quantity Surveyor.	Prior to the issue of a Construction Certificate in respect of the Stage 2 Development Consent that includes approval for the construction of the Young Street and Loftus Street Link.	Subject to clause 11.2, the date the Council's Representative is satisfied (acting reasonably and without delay) that Completion of the construction of the Young Street and Loftus Street Link has occurred and the Through-Site

			Link Easement is registered in accordance with clause 6 of Schedule 4 (in respect of the Young Street and Loftus Street Link).
Through-Site Link Contribution - Young Street and Phillip Street Link	The estimated cost of the construction of the Young Street and Phillip Street Link, as at the date of provision of the Guarantee, as calculated and certified by a Quantity Surveyor.	Prior to the issue of a Construction Certificate in respect of the Stage 2 Development Consent that includes approval for the construction of the Young Street and Phillip Street Link.	Subject to clause 11.2, the date the Council's Representative is satisfied (acting reasonably and without delay) that Completion of the construction of the Young Street and Phillip Street Link has occurred and the Through-Site Link Easement is registered in accordance with clause 6 of Schedule 4 (in respect of the Young Street and Phillip Street Link).
Heritage Conservation Contribution – completion of Heritage Conservation Works	The estimated cost of completing the Heritage Conservation Works, as at the date of provision of the Guarantee, as calculated and certified by a Quantity Surveyor.	Prior to the issue of a Construction Certificate in respect of the Stage 2 Development Consent that includes approval for undertaking the Heritage Conservation Works.	Subject to clause 11.2, the date the Council's Representative is satisfied (acting reasonably and without delay) that Completion of the Heritage Conservation Works has occurred.

1. Adjustment of Guarantee / Bond Amounts

- (a) On each Adjustment Date the Guarantee or Bond Amounts are to be adjusted to the “**Revised Guarantee or Bond Amount**” as determined in accordance with the following formula:

$$RBA = \frac{BA \times A}{B}$$

where:

RBA is the Revised Guarantee or Bond Amount applicable from the relevant Adjustment Date;

BA is the Guarantee or Bond Amount that is current on the relevant Adjustment Date;

A is the CPI published immediately before the relevant Adjustment Date (and in the case of the first adjustment, 30 June 2014);

B is the CPI published immediately before the date of this deed and, in the case of subsequent adjustments, the immediately preceding Adjustment Date.

No increase or other change will be made to the Revised Guarantee or Bond Amount where B is greater than A or where the Revised Guarantee or Bond Amount is less than 10 per cent of the required Guarantee or Bond amounts.

- (b) The Council must give the Relevant Land Owner written notice of the Revised Guarantee or Bond Amounts to apply from the relevant Adjustment Date.
- (c) The Relevant Land Owner must give the Council replacement or further Guarantees or Bonds so that the Council holds Guarantees or Bonds for an amount equal to the Revised Guarantee or Bond Amounts no later than 15 Business Days after receipt of a notice given under paragraph 1.3(b) of this Schedule 10.

2. Provision of first Guarantee or Bond

The Relevant Land Owners acknowledge and agree to adjust the first Guarantee or Bond Amounts payable under the terms of this deed in accordance with clause 1(a) of this Schedule if those Guarantee or Bond Amounts are provided to Council more than 12 months after the date of this deed.

3. Public Art Guarantee and Bond

Clause 1 and 2 of this Schedule 6 do not apply to the Guarantee or Bond required to be provided in respect of the Public Art Contribution in accordance with clause 4 of schedule 4.

SCHEDULE 7

Standards

1 General

The standards referred to in this Schedule 7 are included for information purposes only, and as a guide to the relevant standards for the general nature of the work of the Relevant Works. 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.

2 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.

3 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

4 Council Standards (All Works)

- Sydney Streets Code 2013
- Draft Interim Sydney Lights Design Code 2006
- Sydney Streets Technical Specifications 2013
- City of Sydney Access Policy 1992, amended 2004

SCHEDULE 8

Plan

33 ALFRED ST

50 BRIDGE ST

Minimum 6 metres

5-7 YOUNG ST

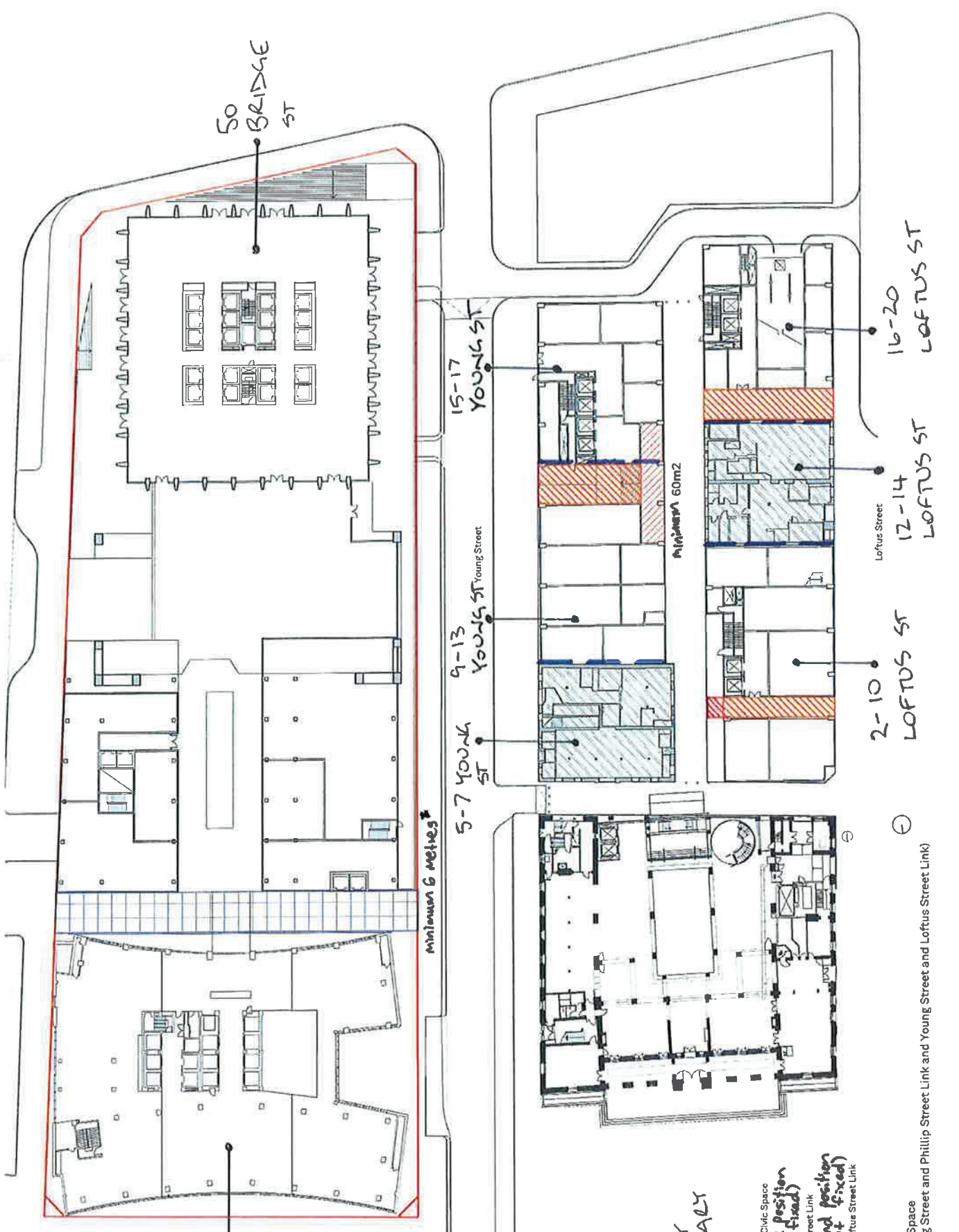
9-13 YOUNG ST

15-17 YOUNG ST

PROPERTY BOUNDARY

- Publicly Accessible Civic Space (shape and position not fixed)
- Young and Phillip Street Link (shape and position not fixed)
- Young Street and Loftus Street Link

Drawing
Publicly Accessible Civic Space
Through-Site Links (Young Street and Phillip Street Link and Loftus Street Link)



2-10 LOFTUS ST
12-14 LOFTUS ST
16-20 LOFTUS ST

SCHEDULE 9

Airspace Lot Covenants

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT 1919**

(Sheet 1 of 13)

Plan: [#insert]

Plan of [#insert]

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

[#insert]
[#insert]
SYDNEY NSW 2000

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
[#1]	Restriction on Use	[#Airspace Lot]	[#Each Lot within Precinct owned by a Land Owner plus Gallipoli Club Land (if applicable)]
[#2]	Easement for light and air and building maintenance	[#Airspace Lot]	[#Adjoining ground level lots within Precinct owned by a Land Owner plus Gallipoli Club Land (if applicable)]
[#3]	Easement for access and construction	[#Airspace Lot]	[#Adjoining ground level lots within Precinct owned by a Land Owner plus Gallipoli Club Land (if applicable)]

Council Authorised Person

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 2 of 13)

Plan: [#insert]

Plan of [#insert]

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
[#4]	Easement for Encroaching Structures	[#Airspace Lot]	[#Ground level Lot immediately below the Airspace Lot]

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 3 of 13)

Plan: [#insert]

Plan of [#insert]

PART 2 (TERMS)

1 Interpretation

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

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

Authorised User means every person authorised by the Grantee for the purposes of an easement, positive covenant and restriction on use created by this Instrument. Subject to the terms of an easement, positive covenant and restriction on use, an Authorised User includes, without limitation the tenants, lessees, sub-lessees, employees, agents, servants, contractors, workmen, licensees and invitees of the Grantee.

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Council.

Building means a building on the Lot Burdened.

Council means the City of Sydney Council and its successors.

Development Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Development Consent means the consent, as modified from time to time under section 96 of the Act, granted to the development application [#insert Stage 1 DA number] and lodged with Council and each Stage 2 Development Consent.

Easement Site means in relation to an easement, positive covenant and restriction on use in this instrument the site of an easement, positive covenant and restriction on use identified on the Plan.

Encroaching Structures means antennas, flag poles, satellite dishes, telecommunications equipment, and any item permitted to be erected within any applicable Sun Access Plane in accordance with the provisions of the LEP.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended).

Government Agency means any governmental, semi or local government, statutory, public or other authority.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 4 of 13)

Plan: [#insert]

Plan of [#insert]

Grantee means:

- (a) the Owner of a Lot Benefited; and
- (b) an Authority benefited.

Grantor means the Owner of a Lot Burdened.

Gross Floor Area has the meaning given in the LEP as at the date of this Instrument.

Improvements means all structures, improvements, fixtures and equipment constructed, erected or installed from time to time (including but not limited to any support columns, foundations or footings constructed).

Indemnified Grantee has the meaning given in clause 7.3(a).

Indemnifying Grantee has the meaning given in clause 7.3(a).

Instrument means this instrument under section 88B of the Act and includes the Plan.

Leasehold Development Act means *Strata Schemes (Leasehold Development) Act 1986* (NSW).

LEP means *Sydney Local Environmental Plan 2012*.

Long Term Lease means a lease for a term of greater than 50 years when it was granted.

Lot Benefited means a lot benefited by an easement, positive covenant or restriction on use in this Instrument.

Lot Burdened means a lot burdened by an easement, positive covenant or restriction in this Instrument.

Occupier means each lessee or licensee from time to time (including each subordinate lessee or licensee).

Owner means:

- (a) if a lot has been subdivided by Strata Plan, the relevant Owners Corporation; or
- (b) if a Long Term Lease has been granted in respect of the lot, the holder of that Long Term Lease; or
- (c) if a Long Term Lease has not been granted in respect of the lot, the owner of the freehold of the lot.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 5 of 13)

Plan: [#insert]

Plan of [#insert]

Plan means the plan of [#insert] to which this Instrument relates.

Stage 2 Development Application means each subsequent detailed development application or applications lodged for a part of the Lot Burdened under section 83B (1) of the EP&A Act pursuant to the Development Consent.

Stage 2 Development Consent means each development consent granted pursuant to a Stage 2 Development Application.

Strata Plan means a strata plan under the Development Act or the Leasehold Development Act (as applicable).

Sun Access Plane has the meaning given in section 6.17 of the LEP as at the date of this Instrument.

1.2 References to certain terms

Unless a contrary intention appears, a reference in this Instrument to:

- (a) **(reference to anything)** a reference to anything is a reference to the whole or each part of it; and
- (b) **(references to statute)** a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and
- (c) **(singular includes plural)** the singular includes the plural and vice versa; and
- (d) **(grammatical forms)** where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (e) **(clauses, paragraphs and schedules)** "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument; and
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency; and
- (g) **(jointly and individually)** 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, but where there is more than one Grantee, an obligation of a Grantee binds that Grantee individually only; and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 6 of 13)

Plan: [#insert]

Plan of [#insert]

- (h) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them); and
- (i) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings do not affect the interpretation of this Instrument.

1.4 Positive covenants and maintenance requirements

A requirement in an easement which requires a Grantee or Grantor to maintain or repair an Easement Site or any thing in an Easement Site is a positive covenant according to section 88BA of the Act.

1.5 Severability

If a provision of an easement under this Instrument is void, unenforceable or illegal, then that provision is severed from that easement and the remaining provisions of that easement has full force and effect.

2 Easements are covenants and agreements between Grantees and Grantors

2.1 Run with Land

The conditions, covenants and restrictions, including in this clause, in each of the easements, positive covenants and restrictions on use in this Instrument are covenants and agreements between:

- (a) each Grantee for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment; and
- (b) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment

Council Authorised Person

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 7 of 13)

Plan: [#insert]

Plan of [#insert]

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

2.2 Ancillary Rights

The Grantee of an easement set out in this Instrument may exercise, subject to the specific terms of that easement, all other ancillary rights and obligation reasonably necessary for the effective application of an easement including reasonable access to the Easement Site. In exercising ancillary rights under an easement, the Grantee must cause as little inconvenience as practicable to the Grantor or any occupier of the Lot Burdened.

3 Complying with this Instrument

3.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this Instrument, except where the contrary intention is expressed.

3.2 Obligations of Grantees and Grantors

Each Grantee and Grantor must, as appropriate, comply with the terms of the easements, positive covenants and restrictions on use in this Instrument.

3.3 Obligations for Authorised Users

For each easement, positive covenant and restriction on use in this Instrument, each Grantee must use reasonable endeavours to ensure that its Authorised Users comply with the terms of the Instrument when they exercise their rights or comply with their obligations under the Instrument.

4 Release and indemnity

4.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this Instrument.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 8 of 13)

Plan: [#insert]

Plan of [#insert]

4.2 Release

The Grantee and its Authorised Users enter upon the Lot Burdened at their own risk and the Grantee hereby releases the Grantor from any claims and demands of every kind and from all liability that may arise in respect of any accident or damage to property or death or injury to any person entering upon the Lot Burdened under the terms of this easement unless the loss is caused by the wilful acts or omissions or negligence of the Grantor.

4.3 Indemnity

The Grantee agrees to indemnify the Grantor against any loss suffered or incurred by the Grantor arising from or in consequence of the use of the Easement Site by the Grantee and any of its Authorised Users, including but not limited to:

- (a) damage to the Lot Burdened, except fair wear and tear;
- (b) damage to any property of the Grantor or any other person; and
- (c) injury to any person on or near the Lot Burdened.

4.4 Reduction of indemnity

The Grantee's indemnity to the Grantor under clause 4.3 ("Indemnity") will be reduced proportionately to the extent that the damage, expense, loss or liability arises from an act or omission of the Grantor or its officers, employees, contractors or agents.

5 Terms of Restriction on Use numbered [#1] in the Plan

5.1 Covenant by Grantor

- (a) The Grantor covenants with each Grantee that no Improvements of any kind may be erected or constructed, or remain erected or constructed on the Lot Burdened, except Improvements authorised by the Easement for Encroaching Structures number [#4] in the Plan.
- (b) The Grantor covenants with each Grantee that no uses of any kind may be undertaken on the Lot Burdened, except for uses contemplated by the easements, positive covenants and restrictions on use in this Instrument.

5.2 Persons empowered to release, vary or modify the restriction

This restriction may only be released, varied or modified with the consent of each Grantee and the Grantor.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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CONVEYANCING ACT 1919**

(Sheet 9 of 13)

Plan: [#insert]

Plan of [#insert]

**6 Terms of easement for light and air and building maintenance
numbered [#2] in the Plan**

6.1 Grant of easement

Subject to the conditions in this easement, the Grantor grants the Grantee and its
Authorised Users the right to:

- (a) the uninterrupted transmission and enjoyment of light over and across the Lot Burdened; and
- (b) the uninterrupted intake and emission of air through the Lot Burdened; and
- (c) enter, pass and repass over, at all times, and remain on the Easement Site for the purpose of cleaning external windows of and maintaining any structure on the Lot Benefited and to do anything reasonably necessary for that purpose, including taking anything onto the Lot Burdened reasonably necessary to exercise the right granted under this easement, including but not limited to transporting and using a lift, cleaning platform or building maintenance unit through and within the Easement Site.

6.2 Requirements when exercising rights

When they exercise their rights under this easement for the purposes of carrying out building maintenance to the Lot Benefited, the Grantee must:

- (a) take all reasonable steps to minimise disturbance or damage to the Grantor, the Lot Burdened and any Occupier and contents of the Lot Burdened; and
- (b) make good any collateral damage as soon as reasonably possible.

**7 Terms of easement for access and construction numbered
[#3] in the Plan**

7.1 Grant of easement

The Grantor grants the Grantee and its Authorised Users the right to:

- (a) enter the Lot Burdened; and
- (b) oversail the Lot Burdened with cranes and other construction equipment and materials; and

Council Authorised Person

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(Sheet 10 of 13)

Plan: [#insert]

Plan of [#insert]

- (c) pass over and remain on the Lot Burdened with vehicles and with or without materials, tools and equipment; and
- (d) erect craneage, scaffolding or hoardings with the Lot Burdened; and
- (e) make noise, create dust and cause disturbance to the Owner and any occupier of the Lot Burdened,

for the period reasonably necessary to enable the Grantee to carry out demolition and construction works in connection with any development or redevelopment of the Lot Benefited or any adjacent lot.

7.2 Requirements when exercising rights

In exercising any rights under this easement, the Grantee and its Authorised Users must:

- (a) cause as little inconvenience as is practicable to the Owner and any Occupier of the Lot Burdened; and
- (b) cause as little damage as is practicable to the Lot Burdened and any improvement on it; and
- (c) make good any damage caused by or in connection with the exercise of its rights under this easement as soon as reasonably possible.

7.3 Indemnity

- (a) Each Grantee (“**Indemnifying Grantee**”) agrees to indemnify each other Grantee (each an “**Indemnified Grantee**”) against any liability or loss arising in connection with damage, loss, injury or death suffered or incurred by the Indemnified Grantee arising from or in consequence of the use of the Easement Site under this easement by the Indemnifying Grantee and any of its Authorised Users, including but not limited to:
 - (i) damage to the Lot Benefited owned by the relevant Indemnified Grantee, except fair wear and tear;
 - (ii) damage to any property of the relevant Indemnified Grantee or any other person; and
 - (iii) injury to, or the death of, any person on or near the Lot Benefited owned by the relevant Indemnified Grantee,

Council Authorised Person

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CONVEYANCING ACT 1919**

(Sheet 11 of 13)

Plan: [#insert]

Plan of [#insert]

except to the extent that such damage, loss, injury or death is caused or contributed to by a negligent act or omission or breach of this Instrument by the Indemnified Grantee, its Authorised Users or their officers, employees, contractors or agents.

- (b) For the avoidance of doubt, the indemnity and release given under clause 7.3(a) is given by each Indemnifying Grantee individually only, and a Grantee is not required to provide the indemnity or release given under clause 7.3(a) in respect of the acts or omissions of any other Grantee.

**8 Terms of easement for Encroaching Structures numbered [#4]
in the Plan**

8.1 Grant of easement

Subject to the conditions of this easement, the Grantor grants the Grantee the right to construct, install, keep, maintain, repair, inspect and replace Encroaching Structures in the Easement Site.

8.2 Rights of the Grantee

The Grantee and its Authorised Users may do anything reasonably necessary for the purposes of exercising their rights under this easement, including:

- (a) entering the Lot Burdened;
- (b) taking anything onto the Lot Burdened; and
- (c) carrying out work, including inspecting, constructing, repairing, maintaining or renewing any support for an Encroaching Structure referred to in clause 8.1.

8.3 Obligations of the Grantee

The Grantee and its Authorised Users must:

- (a) take all reasonable actions to minimise disturbance to the Grantor or the occupier of the Lot Burdened when the Grantee or its Authorised Users exercise rights or comply with obligations under this easement; and
- (b) take reasonable precautions in exercising rights and complying with obligations under this easement to ensure that no damage is caused to the Lot Burdened; and
- (c) promptly rectify any damage caused to the Lot Burdened while exercising rights or complying with obligations under this easement.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 12 of 13)

Plan: [#insert]

Plan of [#insert]

8.4 Repairs and maintenance

The Grantee must keep the Encroaching Structures in good repair and safe condition.

8.5 Obligations of the Grantor

The Grantor must not do or allow anything to be done to damage or interfere with the Encroaching Structures.

Council Authorised Person

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LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 13 of 13)

Plan: Subdivision of []
Covered by Subdivision Certificate No.
Dated:

SIGNING PAGE

[#insert signature blocks for Council and land owners]

Council Authorised Person

SCHEDULE 10

Publicly Accessible Civic Space Easement

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT 1919**

(Sheet 1 of 13)

Plan: [#insert]

Plan of Easements [#insert]

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

[#insert]
[#insert]
SYDNEY NSW 2000

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
[#1]	Easement for Public Access	[#Young and Loftus Street Land]	Council of the City of Sydney
[#2]	Positive covenant in relation to the right of public access	[#Young and Loftus Street Land]	Council of the City of Sydney

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 2 of 13)

Plan: [#insert]

Plan of [#insert]

PART 2 (TERMS)

1 Interpretation

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

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

Authorised User means every person authorised by the Grantee 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.

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Council.

Building means a building on the Lot Burdened.

Council means the City of Sydney Council and its successors.

Development Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Development Consent means the consent, as modified from time to time under section 96 of the Act, granted to the development application [#insert Stage 1 DA number] and lodged with Council and each Stage 2 Development Consent.

Easement Site means in relation to an easement, positive covenant and restriction on use in this instrument the site of an easement, positive covenant and restriction on use identified on the Plan.

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.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended).

Council Authorised Person

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CONVEYANCING ACT 1919**

(Sheet 3 of 13)

Plan: [#insert]

Plan of [#insert]

Government Agency means any governmental, semi or local government, statutory, public or other authority.

Grantee means:

- (c) the Owner of a Lot Benefited; and
- (d) an Authority benefited.

Grantor means the Owner of a Lot Burdened.

Instrument means this instrument under section 88B of the Act and includes the Plan.

Long Term Lease means a lease for a term of greater than 50 years when it was granted.

Lot Benefited means a lot benefited by an easement, positive covenant or restriction on use in this Instrument.

Lot Burdened means a lot burdened by an easement, positive covenant or restriction in this Instrument.

New Access Way has the meaning given in clause 5.9(a).

Occupier means each lessee or licensee from time to time (including each subordinate lessee or licensee).

Owner means:

- (a) if a lot has been subdivided by Strata Plan, the relevant Owners Corporation; or
- (b) if a Long Term Lease has been granted in respect of the lot, the holder of that Long Term Lease; or
- (c) if a Long Term Lease has not been granted in respect of the lot, the owner of the freehold of the lot.

Plan means the plan of [#insert] to which this Instrument relates.

Stage 2 Development Application means each subsequent detailed development application or applications lodged for a part of the Lot Burdened under section 83B (1) of the EP&A Act pursuant to the Development Consent.

Stage 2 Development Consent means each development consent granted pursuant to a Stage 2 Development Application.

Council Authorised Person

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 4 of 13)

Plan: [#insert]

Plan of [#insert]

Strata Plan means a strata plan under the Development Act or the Leasehold Development Act (as applicable).

1.2 References to certain terms

Unless a contrary intention appears, a reference in this Instrument to:

- (a) **(reference to anything)** a reference to anything is a reference to the whole or each part of it; and
- (b) **(references to statute)** a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and
- (c) **(singular includes plural)** the singular includes the plural and vice versa; and
- (d) **(grammatical forms)** where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (e) **(clauses, paragraphs and schedules)** "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument; and
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency; and
- (g) **(jointly and individually)** 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, but where there is more than one Grantee, an obligation of a Grantee binds that Grantee individually only; and
- (h) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them); and
- (i) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings do not affect the interpretation of this Instrument.

Council Authorised Person

INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 5 of 13)

Plan: [#insert]

Plan of [#insert]

1.4 Positive covenants and maintenance requirements

A requirement in an easement which requires a Grantee or Grantor to maintain or repair an Easement Site or any thing in an Easement Site is a positive covenant according to section 88BA of the Act.

1.5 Severability

If a provision of an easement under this Instrument is void, unenforceable or illegal, then that provision is severed from that easement and the remaining provisions of that easement has full force and effect.

2 Easements are covenants and agreements between Grantees and Grantors

The conditions, covenants and restrictions, including in this clause, in each of the easements, positive covenants and restrictions on use in this Instrument are covenants and agreements between:

- (a) each Grantee for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment; and
- (b) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

3 Complying with this Instrument

3.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this Instrument, except where the contrary intention is expressed.

3.2 Obligations of Grantees and Grantors

Each Grantee and Grantor must, as appropriate, comply with the terms of the easements, positive covenants and restrictions on use in this Instrument.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 6 of 13)

Plan: [#insert]

Plan of [#insert]

3.3 Obligations for Authorised Users

For each easement, positive covenant and restriction on use in this Instrument, each Grantee must use reasonable endeavours to ensure that its Authorised Users (excluding members of the public) comply with the terms of the Instrument when they exercise their rights or comply with their obligations under the Instrument.

3.4 Requirements about making rules

If a Grantor is entitled under an easement, positive covenant or restriction on use to make rules about the use of an Easement Site, covenant or restriction by a Grantee or Authorised User, the rules must be consistent with the easement, covenant or restriction.

4 Release and indemnity

4.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this Instrument.

4.2 Release

The Grantee and its Authorised Users enter upon the Lot Burdened at their own risk and the Grantee hereby releases the Grantor from any claims and demands of every kind and from all liability that may arise in respect of any accident or damage to property or death or injury to any person entering upon the Lot Burdened under the terms of this easement unless the loss is caused by the wilful acts or omissions or negligence of the Grantor.

4.3 Indemnity

The Grantee agrees to indemnify the Grantor against any loss suffered or incurred by the Grantor arising from or in consequence of the use of the Easement Site by the Grantee and any of its Authorised Users, including:

- (a) damage to the Lot Burdened, except fair wear and tear;
- (b) damage to any property of the Grantor; and
- (c) injury to any person on the Lot Burdened.

4.4 Reduction of indemnity

The Grantee's indemnity to the Grantor under clause 4.3 ("Indemnity") will be reduced proportionately to the extent that the damage, expense, loss or liability arises from an act or omission of the Grantor or its officers, employees, contractors or agents.

Council Authorised Person

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INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 7 of 13)

Plan: [#insert]

Plan of [#insert]

**5 Terms of easement for public access numbered [#1] in the
Plan**

5.1 Grant

Subject to the Grantor's rights under clauses 5.3 to 5.9, the Grantor grants to the Grantee and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times:

- (a) on foot (but not using rollerblades, skateboards, scooters or similar items or equipment); and
- (b) with wheelchairs or other disabled access aids, but excluding all other vehicles; and
- (c) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired).

5.2 Requirements when exercising rights

When exercising their rights and complying with their obligations under this easement, the Grantee and its Authorised Users must take all reasonable steps:

- (a) to minimise inconvenience, disturbance or damage to the Grantor, the Lot Burdened and any Occupier of the Lot Burdened; and
- (b) not behave in a manner reasonably likely to cause alarm, offence or embarrassment to persons on the Lot Burdened; and
- (c) not soil or leave litter on, or cause excessive noise within the Easement Site; and
- (d) to cause as little damage as is practicable to the Lot Burdened and any improvements on it;
- (e) if damage is caused, restore the Lot Burdened as nearly as practicable to the condition it was in before the damage occurred, as soon as reasonably possible; and
- (f) comply with any rules made by the Grantor according to clause 5.3 ("Making Rules").

Council Authorised Person

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LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 8 of 13)

Plan: [#insert]

Plan of [#insert]

5.3 Making rules

Subject to clause 3.4 (“Requirements about making rules”), the Grantor may make reasonable rules about the use of the Easement Site located in the Lot Burdened by the Grantee and its Authorised Users.

5.4 Grantor’s rights

The Grantor, acting reasonably (and having proper regard to the nature of use or activity carried out on the Lot Burdened), may remove (or refuse entry to) any person entitled to exercise a right under this easement if that person:

- (a) is not adequately clothed;
- (b) is under the influence of alcohol or illegal drugs; or
- (c) behaves in a manner reasonably likely to cause alarm, offence or embarrassment to persons on the Lot Burdened.

5.5 Grantor may restrict access

- (a) The Grantee and its Authorised Users may not exercise their rights under this easement:
 - (i) during reasonable times notified by the Grantor to allow for the Grantor to manage:
 - (A) the reasonable security of the Buildings; and
 - (B) the Grantor’s public liability exposure in respect of the Easement Site and the Lot Burdened; and
 - (ii) during any period in which the Grantee agrees with the Grantor to restrict access over the Easement Site.
- (b) The Grantee's rights under this easement is subject to the Grantor's right to erect temporary hoardings within the Easement Site for the purpose of retail shop fitout at any time and for as long as is reasonably necessary.

5.6 Works to Lot Burdened

- (a) Subject to ensuring access in accordance with the rights granted under clause 5.1, compliance with the requirements of clause 5.7, compliance with relevant Building Code of Australia standards, compliance with relevant minimum

Council Authorised Person

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(Sheet 9 of 13)

Plan: [#insert]

Plan of [#insert]

disability access standards and compliance with the requirements of all relevant development consents, the Grantor 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, signage, 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.

5.7 Restrictions on access – construction, repair or maintenance

The Grantor may temporarily close, or temporarily restrict access through part (but not all) of the Easement Site as agreed with the Grantee expressly in writing for the purposes of this easement, or otherwise for the purpose of, or as a result of:

- (a) the construction, repair or maintenance of any improvement on the Easement Site (including the use of vehicles and equipment for those purposes); or
- (b) carrying out obligations under clause 6.1 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:

- (d) such restriction is for a period not exceeding two months or such other period of time as agreed by the Grantee;
- (e) where the restriction is for a period not exceeding 24 hours, the Grantor takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 5.1; and
- (f) where the restriction is likely to be for a period for between 24 hours and up to two months, the Grantor:

Council Authorised Person

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CONVEYANCING ACT 1919**

(Sheet 10 of 13)

Plan: [#insert]

Plan of [#insert]

- (i) obtains the prior written consent of the Grantee 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 5.1.

5.8 Emergencies

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

5.9 Relocation of Easement

- (a) If any part of the Lot Burdened is redeveloped or developed, the Grantor may relocate the Easement Site if:
 - (i) the Grantee is provided with alternative access which enables the Council and its Authorised Users to access an easement site of an equivalent area within the Lot Burdened or adjacent land (“**New Access Way**”); and
 - (ii) the New Access Way is in a location that is at least as favourable to the Grantee as the existing easement.
- (b) If the easement is relocated under this clause, the Grantor may require this easement to be surrendered and a new easement, on identical terms as the existing easement (except for necessary changes to enable registration), to be registered with a plan showing the location of the New Access Way. In this event, the Grantee must surrender this easement and the Grantor must pay all costs associated with:
 - (i) the costs of any survey plan required for the new easement;

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(Sheet 11 of 13)

Plan: [#insert]

Plan of [#insert]

- (ii) the registration fees for the surrender of this easement and lodgment of the new easement.

6 Terms of Positive Covenant in relation to the Right of Public Access numbered [#2] on the Plan

6.1 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; and
- (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 Grantee, 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 Grantee.

6.2 Public Liability Insurance

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities of the Grantee 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 Grantee (acting reasonably).
- (b) The policy referred to in paragraph 6.2(a) must:
 - (i) note the Grantee 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.

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

Subject to clause 6.4, this Positive Covenant may only be released, varied or modified with the consent of both Grantee and the Grantor.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 12 of 13)

Plan: [#insert]

Plan of [#insert]

6.4 Release

If the easement for public access granted under clause 5 is relocated in accordance with clause 5.9, the Grantor may require this covenant to be surrendered and a new covenant on identical terms to be registered over the relevant new easement site. In this event, the Grantee must surrender this covenant and the Grantor must pay all costs associated with:

- (i) the costs of any survey plan required for the new covenant;
- (ii) the registration fees for the surrender of this covenant and lodgment of the new covenant.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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(Sheet 13 of 13)

Plan: Subdivision of []
Covered by Subdivision Certificate No.
Dated:

SIGNING PAGE

[#insert signature blocks for Council and land owners]

Council Authorised Person

SCHEDULE 11

Through-Site Links Easement

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 1 of 14)

Plan: [#insert]

Plan of [#insert]

Full name and address of proprietors of the land:

[#insert]
 [#insert]
 SYDNEY NSW 2000

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
[#1]	Easement for Public Access	[#Young and Loftus Street Land – in respect of Young Street and Loftus Street Link] [#33 Alfred Street Land – in respect of Young Street and Phillip Street Link] [#50 Bridge Street Land – in respect of Young Street and Phillip Street Link]	Council of the City of Sydney

Council Authorised Person

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE CONVEYANCING ACT 1919

(Sheet 2 of 14)

Plan: [#insert]

Plan of [#insert]

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
[#2]	Positive covenant in relation to the right of public access	[#Young and Loftus Street Land] [#33 Alfred Street Land – in respect of Young Street and Phillip Street Link] [#50 Bridge Street Land – in respect of Young Street and Phillip Street Link]	Council of the City of Sydney

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 3 of 14)

Plan: [#insert]

Plan of [#insert]

PART 2 (TERMS)

1 Interpretation

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

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

Authorised User means every person authorised by the Grantee 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.

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Council.

Building means a building on the Lot Burdened.

Council means the City of Sydney Council and its successors.

Development Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Development Consent means the consent, as modified from time to time under section 96 of the Act, granted to the development application [#insert Stage 1 DA number] and lodged with Council and each Stage 2 Development Consent.

Easement Site means in relation to an easement, positive covenant and restriction on use in this instrument the site of an easement, positive covenant and restriction on use identified on the Plan.

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.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended).

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 4 of 14)

Plan: [#insert]

Plan of [#insert]

Government Agency means any governmental, semi or local government, statutory, public or other authority.

Grantee means:

- (c) the Owner of a Lot Benefited; and
- (d) an Authority benefited.

Grantor means the Owner of a Lot Burdened.

Instrument means this instrument under section 88B of the Act and includes the Plan.

Leasehold Development Act means *Strata Schemes (Leasehold Development) Act 1986* (NSW).

Long Term Lease means a lease for a term of greater than 50 years when it was granted.

Lot Benefited means a lot benefited by an easement, positive covenant or restriction on use in this Instrument.

Lot Burdened means a lot burdened by an easement, positive covenant or restriction in this Instrument.

New Access Way has the meaning given in clause 5.9(a).

Occupier means each lessee or licensee from time to time (including each subordinate lessee or licensee).

Owner means:

- (a) if a lot has been subdivided by Strata Plan, the relevant Owners Corporation; or
- (b) if a Long Term Lease has been granted in respect of the lot, the holder of that Long Term Lease; or
- (c) if a Long Term Lease has not been granted in respect of the lot, the owner of the freehold of the lot.

Plan means the plan of [#insert] to which this Instrument relates.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 5 of 14)

Plan: [#insert]

Plan of [#insert]

Public Road has the meaning given to that term in the *Roads Act 1993 (NSW)*.

Stage 2 Development Application means each subsequent detailed development application or applications lodged for a part of the Lot Burdened under section 83B (1) of the EP&A Act pursuant to the Development Consent.

Stage 2 Development Consent means each development consent granted pursuant to a Stage 2 Development Application.

Strata Plan means a strata plan under the Development Act or the Leasehold Development Act (as applicable).

1.2 References to certain terms

Unless a contrary intention appears, a reference in this Instrument to:

- (a) **(reference to anything)** a reference to anything is a reference to the whole or each part of it; and
- (b) **(references to statute)** a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and
- (c) **(singular includes plural)** the singular includes the plural and vice versa; and
- (d) **(grammatical forms)** where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (e) **(clauses, paragraphs and schedules)** "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument; and
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency; and
- (g) **(jointly and individually)** 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, but where there is more than one Grantee, an obligation of a Grantee binds that Grantee individually only; and
- (h) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them); and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 6 of 14)

Plan: [#insert]

Plan of [#insert]

- (i) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings do not affect the interpretation of this Instrument.

1.4 Positive covenants and maintenance requirements

A requirement in an easement which requires a Grantee or Grantor to maintain or repair an Easement Site or any thing in an Easement Site is a positive covenant according to section 88BA of the Act.

1.5 Severability

If a provision of an easement under this Instrument is void, unenforceable or illegal, then that provision is severed from that easement and the remaining provisions of that easement has full force and effect.

2 Easements are covenants and agreements between Grantees and Grantors

The conditions, covenants and restrictions, including in this clause, in each of the easements, positive covenants and restrictions on use in this Instrument are covenants and agreements between:

- (a) each Grantee for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment; and
- (b) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment,

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 7 of 14)

Plan: [#insert]

Plan of [#insert]

3 Complying with this Instrument

3.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this Instrument, except where the contrary intention is expressed.

3.2 Obligations of Grantees and Grantors

Each Grantee and Grantor must, as appropriate, comply with the terms of the easements, positive covenants and restrictions on use in this Instrument.

3.3 Obligations for Authorised Users

For each easement, positive covenant and restriction on use in this Instrument, each Grantee must use reasonable endeavours to ensure that its Authorised Users (excluding members of the public) comply with the terms of the Instrument when they exercise their rights or comply with their obligations under the Instrument.

3.4 Requirements about making rules

If a Grantor is entitled under an easement, positive covenant or restriction on use to make rules about the use of an Easement Site, covenant or restriction by a Grantee or Authorised User, the rules must be consistent with the easement, covenant or restriction.

4 Release and indemnity

4.1 Application of this clause

This clause applies to each easement, positive covenant and restriction on use in this Instrument.

4.2 Release

The Grantee and its Authorised Users enter upon the Lot Burdened at their own risk and the Grantee hereby releases the Grantor from any claims and demands of every kind and from all liability that may arise in respect of any accident or damage to property or death or injury to any person entering upon the Lot Burdened under the terms of this easement unless the loss is caused by the wilful acts or omissions or negligence of the Grantor.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 8 of 14)

Plan: [#insert]

Plan of [#insert]

4.3 Indemnity

The Grantee agrees to indemnify the Grantor against any loss suffered or incurred by the Grantor arising from or in consequence of the use of the Easement Site by the Grantee and any of its Authorised Users, including:

- (a) damage to the Lot Burdened, except fair wear and tear;
- (b) damage to any property of the Grantor; and
- (c) injury to any person on the Lot Burdened.

4.4 Reduction of indemnity

The Grantee's indemnity to the Grantor under clause 4.3 ("Indemnity") will be reduced proportionately to the extent that the damage, expense, loss or liability arises from an act or omission of the Grantor or its officers, employees, contractors or agents.

5 Terms of easement for Public Access numbered [#1] in the Plan

5.1 Grant

Subject to the Grantor's rights under clauses 5.3 to 5.9, the Grantor grants to the Grantee and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times for the purpose of passing through the Lot Burdened to gain access to adjoining Public Roads:

- (a) on foot (but not using rollerblades, skateboards, scooters or similar items or equipment); and
- (b) with wheelchairs or other disabled access aids, but excluding all other vehicles; and
- (c) without animals (except for guide dogs or hearing dogs for the visually or hearing impaired).

5.2 Requirements when exercising rights

When exercising their rights and complying with their obligations under this easement, the Grantee and its Authorised Users must take all reasonable steps:

- (a) to minimise inconvenience, disturbance or damage to the Grantor, the Lot Burdened and any Occupier of the Lot Burdened; and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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CONVEYANCING ACT 1919**

(Sheet 9 of 14)

Plan: [#insert]

Plan of [#insert]

- (b) not behave in a manner reasonably likely to cause alarm, offence or embarrassment to persons on the Lot Burdened; and
- (c) not soil or leave litter on, or cause excessive noise within the Easement Site; and
- (d) to cause as little damage as is practicable to the Lot Burdened and any improvements on it;
- (e) if damage is caused, restore the Lot Burdened as nearly as practicable to the condition it was in before the damage occurred, as soon as reasonably possible; and
- (f) comply with any rules made by the Grantor according to clause 5.3 (“Making Rules”).

5.3 Making rules

Subject to clause 3.4 (“Requirements about making rules”), the Grantor may make reasonable rules about the use of the Easement Site located in the Lot Burdened by the Grantee and its Authorised Users.

5.4 Grantor’s rights

The Grantor, acting reasonably (and having proper regard to the nature of use or activity carried out on the Lot Burdened), may remove (or refuse entry to) any person entitled to exercise a right under this easement if that person:

- (a) is not adequately clothed;
- (b) is under the influence of alcohol or illegal drugs; or
- (c) behaves in a manner reasonably likely to cause alarm, offence or embarrassment to persons on the Lot Burdened.

5.5 Grantor may restrict access

- (a) The Grantee and its Authorised Users may not exercise their rights under this easement:
 - (i) during reasonable times notified by the Grantor to allow for the Grantor to manage:
 - (A) the reasonable security of the Buildings; and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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CONVEYANCING ACT 1919**

(Sheet 10 of 14)

Plan: [#insert]

Plan of [#insert]

- (B) the Grantor's public liability exposure in respect of the Easement Site and the Lot Burdened; and
 - (ii) during any period in which the Grantee agrees with the Grantor to restrict access over the Easement Site.
- (b) The Grantee's rights under this easement is subject to the Grantor's right to erect temporary hoardings within the Easement Site for the purpose of retail shop fitout at any time and for as long as is reasonably necessary.

5.6 Works to Lot Burdened

- (a) Subject to ensuring access in accordance with the rights granted under clause 5.1, and compliance with the requirements of clause 5.7 the Grantor 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, signage, 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.

5.7 Restrictions on access – construction, repair or maintenance

The Grantor may temporarily close, or temporarily restrict access through part (but not all) of the Easement Site as agreed with the Grantee expressly in writing for the purposes of this easement, or otherwise for the purpose of, or as a result of:

- (a) the construction, repair or maintenance of any improvement on the Easement Site (including the use of vehicles and equipment for those purposes); or
- (b) carrying out obligations under clause 6.1 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,

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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CONVEYANCING ACT 1919**

(Sheet 11 of 14)

Plan: [#insert]

Plan of [#insert]

provided that:

- (d) such restriction is for a period not exceeding two months or such other period of time as agreed by the Grantee;
- (e) where the restriction is for a period not exceeding 24 hours, the Grantor takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 5.1; and
- (f) where the restriction is likely to be for a period for between 24 hours and up to two months, the Grantor:
 - (i) obtains the prior written consent of the Grantee 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 5.1.

5.8 Emergencies

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

5.9 Relocation of Easement

- (a) If any part of the Lot Burdened is redeveloped or developed, the Grantor may relocate the Easement Site if:
 - (i) the Grantee is provided with alternative access which enables the Council and its Authorised Users to access an easement site of an equivalent area within the Lot Burdened or adjacent land (“**New Access Way**”); and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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CONVEYANCING ACT 1919**

(Sheet 12 of 14)

Plan: [#insert]

Plan of [#insert]

- (ii) the New Access Way is in a location that is at least as favourable to the Grantee as the existing easement.
- (b) If the easement is relocated under this clause, the Grantor may require this easement to be surrendered and a new easement, on identical terms as the existing easement (except for necessary changes to enable registration), to be registered with a plan showing the location of the New Access Way. In this event, the Grantee must surrender this easement and the Grantor must pay all costs associated with:
 - (i) the costs of any survey plan required for the new easement;
 - (ii) the registration fees for the surrender of this easement and lodgment of the new easement.

6 Terms of Positive Covenant in relation to the Right of Public Access numbered [#2] on the Plan

6.1 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 Grantee, 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 Grantee.

6.2 Public Liability Insurance

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities of the Grantee 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 Grantee (acting reasonably).
- (b) The policy referred to in paragraph 6.2(a) must:
 - (i) note the Grantee as an interested party; and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 13 of 14)

Plan: [#insert]

Plan of [#insert]

- (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.

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

Subject to clause 6.4, this Positive Covenant may only be released, varied or modified with the consent of both Grantee and the Grantor.

6.4 Release

If the easement for public access granted under clause 5 is relocated in accordance with clause 5.9, the Grantor may require this covenant to be surrendered and a new covenant on identical terms to be registered over the relevant new easement site. In this event, the Grantee must surrender this covenant and the Grantor must pay all costs associated with:

- (i) the costs of any survey plan required for the new covenant;
- (ii) the registration fees for the surrender of this covenant and lodgment of the new covenant.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 14 of 14)

Plan: [#insert]

Plan of [#insert]

SIGNING PAGE

[#insert signature blocks for Council and land owners]

Council Authorised Person

SCHEDULE 12

Minimum Non-Residential Floor Space Restriction

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE
 INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
 LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO
 SECTION 88B OF THE CONVEYANCING ACT 1919**

(Sheet 1 of 6)

Plan: [#insert]

Plan of [#insert]

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

[#insert]
 [#insert]
 SYDNEY NSW 2000

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
[#1]	Restriction on Use (Non-Residential Floor Space)	[#Young and Loftus Street Land]	Council of the City of Sydney

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
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(Sheet 2 of 6)

Plan: [#insert]

Plan of [#insert]

PART 2 (TERMS)

1 Interpretation

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

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

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Council.

Development Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Gallipoli Club Land means the land comprised in certificate of title folio identifier 1/87960 known as 12-14 Loftus Street, Sydney NSW.

Government Agency means any governmental, semi or local government, statutory, public or other authority.

Grantee means:

- (a) the Owner of a Lot Benefited; and
- (b) an Authority benefited.

Grantor means the Owner of a Lot Burdened.

Gross Floor Area has the meaning given in the LEP as at the date of this Instrument.

Instrument means this instrument under section 88B of Act and includes the Plan.

Leasehold Development Act means *Strata Schemes (Leasehold Development) Act 1986* (NSW).

LEP means *Sydney Local Environmental Plan 2012*.

Long Term Lease means a lease for a term of greater than 50 years when it was granted.

Lot Benefited means a lot benefited by an easement, positive covenant or restriction on use in this Instrument.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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(Sheet 3 of 6)

Plan: [#insert]

Plan of [#insert]

Lot Burdened means a lot burdened by an easement, positive covenant or restriction in this Instrument.

Owner means:

- (a) if a lot has been subdivided by Strata Plan, the relevant Owners Corporation; or
- (b) if a Long Term Lease has been granted in respect of the lot, the holder of that Long Term Lease; or
- (c) if a Long Term Lease has not been granted in respect of the lot, the owner of the freehold of the lot.

Plan means the plan of [#insert] to which this Instrument relates.

Strata Plan means a strata plan under the Development Act or the Leasehold Development Act (as applicable).

Young Street and Loftus Street Land means each of the following:

- (a) the land comprised in certificate of title folio identifiers 1/723381 and 1/104784 known as 'Hinchcliff House', 5 - 7 Young Street, Sydney NSW;
- (b) the land comprised in certificate of title Auto Consol 11987-71 known as 9-13 Young Street, Sydney NSW;
- (c) the land comprised in certificate of title folio identifier 1/810463 known as 15-17 Young Street, Sydney NSW;
- (d) the land comprised in certificate of title folio identifier 501/709624 known as 2-10 Loftus Street, Sydney NSW; and
- (e) the land comprised in certificate of title folio identifier 1/134861 known as 16-20 Loftus Street, Sydney NSW.

1.2 References to certain terms

Unless a contrary intention appears, a reference in this Instrument to:

- (a) **(reference to anything)** a reference to anything is a reference to the whole or each part of it; and
- (b) **(references to statute)** a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
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CONVEYANCING ACT 1919**

(Sheet 4 of 6)

Plan: [#insert]

Plan of [#insert]

- (c) **(singular includes plural)** the singular includes the plural and vice versa; and
- (d) **(grammatical forms)** where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (e) **(clauses, paragraphs and schedules)"clause", "paragraph", "schedule" or "sub-clause"** means a clause, paragraph, schedule or sub-clause respectively of this Instrument; and
- (f) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency; and
- (g) **(jointly and individually)** 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, but where there is more than one Grantee, an obligation of a Grantee binds that Grantee individually only; and
- (h) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them); and
- (i) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings do not affect the interpretation of this Instrument.

1.4 Severability

If a provision of an easement under this Instrument is void, unenforceable or illegal, then that provision is severed from that easement and the remaining provisions of that easement has full force and effect.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 5 of 6)

Plan: [#insert]

Plan of [#insert]

2 Easements are covenants and agreements between Grantees and Grantors

The conditions, covenants and restrictions, including in this clause, in each of the easements, positive covenants and restrictions on use in this Instrument are covenants and agreements between:

- (a) each Grantee for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment; and
- (b) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

3 Terms of Restriction on Use (Non-Residential Floor Space) numbered [#1] in the Plan

3.1 Covenant by Grantor

The Grantor covenants with Grantee that it will not use, or permit others to use more than 60% of the total Gross Floor Area of the Young and Loftus Street Land and the Gallipoli Club Land for residential purposes or as 'residential accommodation' as defined in the LEP as at the date of this Instrument.

3.2 Persons empowered to release, vary or modify the restriction

This restriction may only be released, varied or modified with the consent of both the Grantee and the Grantor.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 6 of 6)

Plan: [#insert]

Plan of [#insert]

SIGNING PAGE

[#insert signature blocks for Council and land owners]

Council Authorised Person

SCHEDULE 13

Lanes Development Restriction

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO
SECTION 88B OF THE CONVEYANCING ACT 1919**

(Sheet 1 of 7)

Plan: [#insert]

Plan of [#insert]

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

[#insert]
[#insert]
SYDNEY NSW 2000

PART 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
[#1]	Restriction on Use (Lanes Development)	[#Young and Loftus Street Land]	Council of the City of Sydney

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 2 of 7)

Plan: [#insert]

Plan of [#insert]

PART 2 (TERMS)

1 Interpretation

1.1 Definitions

These meanings, in any form, apply unless the contrary intention appears:

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

Authority means any government or governmental, semi-governmental, quasi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity and includes the Council.

Building means a building on the Lot Burdened.

Council means the City of Sydney Council and its successors.

Development Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Development Consent means the consent, as modified from time to time under section 96 of the EP&A Act, granted to the development application [#insert Stage 1 DA number] and lodged with Council and each Stage 2 Development Consent.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW) (as amended).

Government Agency means any governmental, semi or local government, statutory, public or other authority.

Grantee means:

- (a) the Owner of a Lot Benefited; and
- (b) an Authority benefited.

Grantor means the Owner of a Lot Burdened.

Gross Floor Area has the meaning given in the LEP as at the date of this Instrument.

Instrument means this instrument under section 88B of the Act and includes the Plan.

Lanes Development Floor Space means 'lanes development floor space' within the meaning of the LEP, as amended by the LEP Amendment.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 3 of 7)

Plan: [#insert]

Plan of [#insert]

Leasehold Development Act means *Strata Schemes (Leasehold Development) Act 1986* (NSW).

LEP means *Sydney Local Environmental Plan 2012*.

LEP Amendment means [#insert definition of the LEP Amendment, as made].

Long Term Lease means a lease for a term of greater than 50 years when it was granted.

Lot Benefited means a lot benefited by an easement, positive covenant or restriction on use in this Instrument.

Lot Burdened means a lot burdened by an easement, positive covenant or restriction in this Instrument.

Owner means:

- (a) if a lot has been subdivided by Strata Plan, the relevant Owners Corporation; or
- (b) if a Long Term Lease has been granted in respect of the lot, the holder of that Long Term Lease; or
- (c) if a Long Term Lease has not been granted in respect of the lot, the owner of the freehold of the lot.

Plan means the plan of [#insert] to which this Instrument relates.

Public Road has the meaning given to that term in the *Roads Act 1993 (NSW)*.

Stage 2 Development Application means each subsequent detailed development application or applications lodged for a part of the Lot Burdened under section 83B (1) of the EP&A Act pursuant to the Development Consent.

Stage 2 Development Consent means each development consent granted pursuant to a Stage 2 Development Application.

Strata Plan means a strata plan under the Development Act or the Leasehold Development Act (as applicable).

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 4 of 7)

Plan: [#insert]

Plan of [#insert]

1.2 References to certain terms

Unless a contrary intention appears, a reference in this Instrument to:

- (a) **(reference to anything)** a reference to anything is a reference to the whole or each part of it; and
- (b) **(references to statute)** a law, ordinance or code includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them; and
- (c) **(singular includes plural)** the singular includes the plural and vice versa; and
- (d) **(grammatical forms)** where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
- (e) **(clauses, paragraphs and schedules)** "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument; and
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency; and
- (g) **(jointly and individually)** 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, but where there is more than one Grantee, an obligation of a Grantee binds that Grantee individually only; and
- (h) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them); and
- (i) **(meaning not limited)** the words "include", "including", "for example" or "such as" are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings do not affect the interpretation of this Instrument.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 5 of 7)

Plan: [#insert]

Plan of [#insert]

1.4 Severability

If a provision of an easement under this Instrument is void, unenforceable or illegal, then that provision is severed from that easement and the remaining provisions of that easement has full force and effect.

2 Easements are covenants and agreements between Grantees and Grantors

The conditions, covenants and restrictions, including in this clause, in each of the easements, positive covenants and restrictions on use in this Instrument are covenants and agreements between:

- (a) each Grantee for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment; and
- (b) each Grantor for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, positive covenants and restrictions on use.

3 Terms of Restriction on Use (Lanes Development) numbered [#1] in the Plan

3.1 Covenant by Grantor

The Grantor covenants with Grantee that any individual street level premises provided in new and existing Buildings adjoining laneways within the Lot Burdened in accordance with the Development Consent that comprise Lanes Development Floor Space, must not be redeveloped, consolidated or otherwise varied in way that would cause one or more of the relevant premises to cease to satisfy each of the following criteria, without the prior written consent of the Council:

- (a) have a Gross Floor Area of less than or equal to 100 square metres, and
- (b) not have direct access to any other premises in the relevant Building, and

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 6 of 7)

Plan: [#insert]

Plan of [#insert]

- (c) adjoin, and have direct access to, a lane (being a Public Road with a width of less than 6 metres); and
- (d) have a floor level no more than 5 metres above the existing ground level of the relevant lane (being the lane referred to in clause 3.1(c) above); and
- (e) be used for the purpose of business premises, community facilities, entertainment facilities, food and drink premises, information and education facilities, places of public worship, pubs, indoor recreation facilities, a registered club or retail premises.

3.2 Persons empowered to release, vary or modify the restriction

This restriction may only be released, varied or modified with the consent of both the Grantee and the Grantor.

Council Authorised Person

**INSTRUMENT SETTING OUT TERMS OF EASEMENTS PROFITS À PRENDRE
INTENDED TO BE CREATED OR RELEASED AND RESTRICTIONS ON THE USE OF
LAND INTENDED TO BE CREATED PURSUANT TO SECTION 88B OF THE
CONVEYANCING ACT 1919**

(Sheet 7 of 7)

Plan: Subdivision of []
Covered by Subdivision Certificate No.
Dated:

SIGNING PAGE

[#insert signature blocks for Council and land owners]

Council Authorised Person

EXECUTED as a deed

Signed sealed and delivered for and)
on behalf of **The Council of the City of**)
Sydney ABN 22 636 550 790 in the)
presence of:)

.....)
Signature of Witness)

.....
Signature of The Council of the City
of Sydney

.....)
Name of Witness in full)

.....
The Council of the City of Sydney

[#insert execution blocks for Land Owners]