

ATTACHMENT H

**PLANNING AGREEMENT BETWEEN THE
COUNCIL OF THE CITY OF SYDNEY
("COUNCIL") AND THE GALLIPOLI
MEMORIAL CLUB LIMITED AND AMP
CAPITAL INVESTORS LIMITED IN ITS
CAPACITY AS TRUSTEE OF THE AMP
CAPITAL WHOLESALE OFFICE FUND
("GUARANTOR")**

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

(“Council”)

and

The Gallipoli Memorial Club Limited ACN 001 038 740

(“Land Owner”)

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**

(“Guarantor”)

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**)

THE GALLIPOLI MEMORIAL CLUB LIMITED (ACN 001 038 740) of 12 Loftus Street, SYDNEY NSW 2000 (**Land Owner**)

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 (**Guarantor**)

1 INTRODUCTION

- A.** The Land Owner owns the Land.
- B.** The Land Owner intends to carry out part of the Development on the Land as part of the broader Development of the AMP Precinct.
- C.** The Land Owner together with each AMP Precinct Land Owner has 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 Owner and the Council that the Land Owner will dedicate land or provide other material public benefits to Council, in connection with the LEP Amendment on the terms and conditions of this deed.
- F.** The Council and each AMP Precinct Land Owner have also entered into the AMP Precinct VPA in connection with the LEP Amendment.
- G.** 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 Building means the existing building located on the 50 Bridge Street Land that is to be redeveloped as part of the Development.

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 ACPP Office Pty Limited (ACN 108 662 031) in its capacity as trustee of ACPP 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 the 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 the Airspace Lot under this deed in accordance with section 88B of the Conveyancing Act and set out in Schedule 8 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.

AMP Precinct means the land comprising:

- (a) the 50 Bridge Street Land;
- (b) the 33 Alfred Street Land; and
- (c) the Young and Loftus Street Land.

AMP Precinct Land Owner means the registered proprietor of each lot comprising the AMP Precinct from time to time.

AMP Precinct VPA means the Planning Agreement dated on or about the date of this deed between the Council, 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) and Kent Street Pty Limited (ACN 006 794 654) in its capacity as trustee of the Loftus Street Trust (ABN 93 573 234 985).

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 the 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 Land Owner;
- (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.

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

- (a) setting out (in reasonable detail) the 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 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 the 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 4.1(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; and
- (c) Minimum Non-Residential Floor Space Contribution.

to be provided by the Land Owner 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.

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 and the AMP Precinct 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, the 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' (as defined in the AMP Precinct VPA),

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 and the AMP Precinct, that utilises the provisions of the LEP Amendment to allow for a Floor Space Ratio for the 50 Bridge Street 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 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 the draft Conservation Management Plan prepared in respect of the Land by Urbis, dated December 2012.

Encumbered Land means the Lots affected by the Minimum Non-Residential Floor Space Restriction.

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.

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 provision of the Heritage Conservation Contribution, being:

- (a) the finalisation of the Draft Conservation Management Plans in accordance with clause 4.1 of Schedule 4; and
- (b) the completion of the Heritage Conservation Works in accordance with clause 4.2 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 4 of Schedule 4.

Heritage Conservation Works means the Conservation Works required to be completed on the Heritage Items located within the Land in accordance with the Development Consent or any Stage 2 Development Consent and the Conservation Management Plans finalised in accordance with clause 4.1(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 Building.

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 comprised in certificate of title folio identifier 1/87960 known as 12-14 Loftus Street, Sydney.

Land Owner means the person identified as such in the 'Parties' section on page 4 of this deed being the registered proprietor 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 Owner, or such other person as notified by the Land Owner and each AMP Precinct Land Owner (acting jointly) to Council from time to time.

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.

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 5 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 and the Land 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 that:

- (a) 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 Land must be provided as non-residential uses; and
- (b) 100% of the total Gross Floor Area of all Buildings (new and existing) within the Land must be provided as non-residential uses.

Mortgagee means any mortgagee, charge or financier of the Land Owner 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 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.

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 restrictions on use over the Encumbered Land in favour of the Council.

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 Party has the meaning given in clause 16.4.

Relevant Trust has the meaning given in clause 16.4.

Relevant Works means the construction of the Heritage Conservation Works in accordance with the Heritage Conservation 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 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.

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

Trigger Development Consent means a development consent that approves the undertaking of Works on the 50 Bridge Street Building 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 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.

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 Owner to provide Contributions

The Land Owner undertakes 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.

5.2 Heritage - Bennelong Stormwater Channel

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

6 ENFORCEMENT

6.1 Land Owners to provide security

The Land Owner 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) and clause 11.2, (as applicable).

6.2 Rights and remedies of the Council

The Land Owner expressly acknowledges and agrees 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) and clause 11.3(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 Land Owner on each corresponding Release Event.

6.4 Indemnity by the Land Owners

The 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).

7 REGISTRATION AND RESTRICTION ON USE OF AIRSPACE LOT

7.1 Registration of deed

- (a) The Land Owner 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) The Land Owner must promptly following execution of this deed, provide signed counterparts of the deed to the Council for execution by the Council;
- (c) The Land Owner must promptly after the execution of this deed by the Council, produce a letter from its 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 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) The 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 Owner following registration of this deed by the Council and forward the Land Owner 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 Owner to release and discharge this deed from the title to each Lot comprising the Land, excluding the Airspace Lot (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 Lot), the Council's Representative being satisfied, acting reasonably, that the Land Owner has provided all Contributions under this deed in respect of that Lot; and
 - (ii) in respect of each Lot (excluding the Airspace Lot), 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 the Airspace Lot, following the creation of the Airspace Lot and dedication of the Airspace Lot to the Council in accordance with the Airspace Lot Contribution, regardless of whether or not the Land Owner has provided all Contributions under this deed in respect of the Airspace Lot.

7.3 Interest in Land

The Land Owner represents and warrants that it is the legal and beneficial owner of the Land, or if the Land Owner owns the Land in their capacity as trustees of a trust that it is the registered proprietor of the Land in its 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 Owner agrees 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 and the Minimum Non-Residential Floor Space Restriction may bind a Lessee of the Land, in accordance with the terms of those instruments.

7.6 Certificates

- (a) If the Land Owner has provided all Contributions under this deed in respect of a relevant Lot, the 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 Land Owner has provided all Contributions under this deed in respect of the relevant Lot, it must promptly issue a Certificate to the Land Owner.

7.7 Restriction on Use – Airspace Lot

- (a) Following the dedication and transfer of the 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 the Land Owner and each AMP Precinct Land Owner, for the benefit of each Land Owner and each AMP Precinct Land Owner, their successors and every person who is entitled to an estate or interest in possession of the Land, the AMP Precinct 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 Lot; 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 Lot.
- (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 Lot) and the AMP Precinct (excluding any 'Airspace Lots' created in accordance with the provisions of the AMP Precinct VPA); and
 - (ii) the burden of which is intended to run with the ownership of the Airspace Lot.
- (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 each AMP Precinct Land Owner; 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 each AMP Precinct Land Owner, on terms satisfactory to the Land Owners and AMP Precinct Land Owners (acting reasonably), under which the Incoming Party gives a covenant for the benefit of each Land Owner and each AMP Precinct Land Owner, 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.

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 Land Owner 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 Land Owner 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 Land Owner 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 Land Owner:
- (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 Land Owner 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 Land Owner 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 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 Land Owner 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 Land Owner 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 Land Owner, approve, vary or direct the Land Owner 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 Land Owner 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

The 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 Land Owner 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 Land Owner 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 Land Owner must (at its 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 Land Owner, the Relevant Works have reached Completion, the Land Owner 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 Land Owner 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 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

The Land Owner must ensure that the Relevant Works are 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 Land Owner so requests, the Council may permit the Land Owner not to complete the Relevant Works (or part of them) by issuing a notice in writing to the Land Owner, 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 Land Owner 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 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 Land Owner. 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 Land Owner as a debt due and owing.

- (d) If the Council determines to complete the Relevant Works under this clause 10.8, the 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.

11 DEFECTS LIABILITY PERIOD

11.1 Defects in the Relevant Works

If the Council notifies the Land Owner of a Defect in the Relevant Works within the Defects Liability Period, then the Land Owner 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 Land Owner of its obligations under this clause 11 and the Land Owner must make any necessary arrangements to allow that to occur.

11.3 Application of Security

- (a) If the Land Owner does 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 Land Owner 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 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, 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 Land Owner.

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 and 15.3 or otherwise with the consent of the other Parties.

15.2 Land Owners' rights to transfer Land

- (a) The Land Owner 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.
- (b) Notwithstanding clause 15.3(a) the 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 Land Owner satisfies the Council (acting reasonably and without delay) that it is not in material breach of its obligations under this deed.
- (c) The Land Owner will pay the Council's reasonable costs and expenses incurred under this clause 15.2.

15.3 Transfer of land between Land Owner and Related Entities

- (a) The provisions of clause 15.2 do not apply where the 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 15.3(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.

15.4 Substitution of Security

As soon as is practicable after the Land Owner has any entered into an assignment, transfer or novation in accordance with clause 15.1, clause 15.2 or clause 15.3 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 the 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, it has not entered into this deed in the capacity of trustee of any trust; and
- (c) where a Party 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 – 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 16.3 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 16.3(d).

16.4 Application of Clause 16.5

Clause 16.5 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**”).

16.5 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 16.5 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 16.5(d).

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 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;
 - (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 Owner under this deed, including the obligations to provide the Contributions, are suspended;
 - (ii) subject to clause 17.1(b)(iii), to the extent that Contributions have been provided to the Council in accordance with this deed, the Land Owner agree that the Council cannot be required to return those Contributions or otherwise compensate the Land Owner in relation to the provision of those Contributions; and
 - (iii) the 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 50 Bridge Street Building in a manner which:
 - (A) allows for a Floor Space Ratio in respect of the 50 Bridge Street 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 Land 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 Airspace Lot to the Land Owner:

 - (C) within 20 Business Days of a request in writing; and

- (D) for a consideration of \$1 for the 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 50 Bridge Street Building 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 its own and the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of this deed.
- (b) The Land Owner 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 Owner 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 Owner 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 Owner 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) The 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 Owner and each AMP Land Owner. However, any notices or communications from the 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 Owner. 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 Land Owner 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 the 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 the 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 the 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 Land Owner or the Guarantor has provided all Guaranteed Contributions in respect of the Land.
- (b) If the Land Owner or the Guarantor has provided all Guaranteed Contributions under this deed in respect of the Land, the 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 Land;
 - (ii) confirming that there are no further Guaranteed Contributions to be provided in accordance with the terms of this deed in respect of the Land; and

- (iii) in a form capable of being relied on by third parties dealing with the Guarantor or the 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 that the Land Owner or the Guarantor has provided all Guaranteed Contributions under this deed in respect of the Land, it must promptly issue a Guarantee Certificate to the 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 and clause 6 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 OWNER

THE GALLIPOLI MEMORIAL CLUB LIMITED

Contact: **[#insert]**

Address: 12 Loftus Street
SYDNEY NSW 2000

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

GUARANTOR

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]**

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

SCHEDULE 3

Land (clause 2.1) and Contributions (clause 7.2)

1 Lots

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Description	Lot Number	Deposited Plan	Folio Identifier	Relevant Land Owner	Contributions
Gallipoli Club Land	1	87960	1/87960	The Gallipoli Memorial Club Limited	<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 • Minimum Non-Residential Floor Space Contribution

SCHEDULE 4

Contributions (clause 5)

1 Contributions

The Land Owner undertake to provide the 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 the 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 Building in relation to the relevant Stage 2 Development Consent.
2	Heritage Conservation Contribution – finalisation of Draft Conservation Management Plan	Finalisation and approval of the Draft Conservation Management Plans in accordance with clause 4.1 of this Schedule 4 – prior to the first Construction Certificate being issued in respect of Works to be undertaken to the 50 Bridge Street Building pursuant to a Trigger Development Consent.
3	Heritage Conservation Contribution – completion of Heritage Conservation Works	Completion of the Heritage Conservation Works in accordance with clause 8.2 of this Schedule 4 – prior to the first Occupation Certificate being in respect of Works undertaken to the 50 Bridge Street Building pursuant to a Trigger Development Consent, but only if such a Trigger Development Consent utilises Floor Space Ratio from the Land so as to allow for a Floor Space Ratio in respect of the 50 Bridge Street 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).
4	Minimum Non-Residential Floor Space	Registration of the Minimum Non-Residential Floor Space Contribution

	Column 1	Column 2
Item	Contributions	Delivery Event and timing for delivery
	Contribution	Restriction in accordance with clause 5 of this Schedule 4 – prior to the first Occupation Certificate being issued for the Building.

2 Airspace Lot Contribution

2.1 Dedication of the Airspace Lot

- (a) The Land Owner must, at no cost to the Council, carry out all steps required to dedicate and transfer the Airspace Lot to the Council in accordance with clause 2.1 of this Schedule 4 (“**Airspace Lot Contribution**”).
- (b) The Parties agree that the dedication and transfer referred to in clause 2.1(a) of this Schedule 4 will occur in accordance with the timing specified in Column 2 of the table in clause 1 of this Schedule 4.
- (c) The 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 the 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 Building, executed by the Land Owner and in registrable form; and
 - (B) the certificates of titles for the Airspace Lot immediately above the Building,

and must take any other necessary action to give effect to the transfer of the title of the Airspace Lot above the 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 Land Owner 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 Lot pursuant to clause 2.1(c) of this Schedule 4.
- (f) The Land Owner will pay all rates and taxes owing in respect of each Airspace Lot up to and including the date that the Land Owner 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 the Land Owner does not procure the transfer of the 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 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 Land Owner 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 Owner and the Council agree that:
- (i) clause 2.2(a) of this Schedule 4 is an agreement between the Land Owner 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 Owner and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (d) The 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 an AMP Precinct Land Owner, in respect of a compulsory acquisition of an Airspace Lot from the Land, undertaken in accordance with clause 2.2(a) of this Schedule 4.

2.3 Reimbursement of Council's Costs

The 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 Airspace Lot and Restriction on Use

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

- (a) the final dimensions of the Airspace Lots is subject to any Stage 2 Development Consent and survey and may be created by one or more Plans of Subdivision;
- (b) the Minimum Non-Residential Floor Space Restriction is 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 Minimum Non-Residential Floor Space Restriction to be registered;
- (c) prior to registration of the Minimum Non-Residential Floor Space 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; and
- (d) 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.

4 Heritage Conservation Contribution

4.1 Heritage Conservation Contribution – finalisation of Draft Conservation Management Plan

- (a) The Land Owner must (at its own cost):
 - (i) finalise the Draft Conservation Management Plan; and
 - (ii) in respect of the Building located on the Land, being an item of local heritage significance, obtain approval of the terms of the final Conservation Management Plan accordance with clause 4.1(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 4.1(a)(ii) and must provide written notice to the Land Owner once the terms of the Conservation Management Plan has been approved. The Council may not withhold its approval to a Conservation Management Plan in accordance with clause 4.1(a)(ii) if such a Conservation Management Plan is in substantially the same form as the Draft Conservation Management.
- (c) The Parties acknowledge that the Conservation Management Plan finalised and approved in accordance with clause 4.1(a) and clause 4.1(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 the Land or any part of it 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.

4.2 Heritage Conservation Contribution – completion of Heritage Conservation Works

The Land Owner must (at its own cost) complete the Heritage Conservation Works, 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.

5 Minimum Non-Residential Floor Space Contribution

- (a) The Land Owner must create and register a restriction on the use of land in favour of the Council over the 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 Land Owner 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 5(a) of this Schedule 4.

6 Compulsory Acquisition – Minimum Non-Residential Floor Space Contribution

- (a) If the Land Owner does not create and register a restriction on use in favour of the Council in accordance with clause 5 of this Schedule 4, the Council may compulsorily acquire a restriction on use over the relevant part of the Land on terms generally in accordance with the Minimum Non-Residential Floor Space Restriction 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(a), Council must:
 - (i) give written notice to the Land Owner to rectify the noncompliance with clause 5 of this Schedule 4 within 40 business days of receipt of the written notice; and
 - (ii) allow the Land Owner to rectify the non-compliance with clause 5 of this Schedule 4 within 40 business days of receipt of the written notice referred to in clause 6(b)(i).
- (c) The Land Owners and the Council agree that:
 - (i) clause 6(a) of this Schedule 4 is an agreement between the Land Owner and the Council for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*; and

- (ii) in clause 6(a) of this Schedule 4, the Land Owner and the Council have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.

- (d) The 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 an AMP Precinct Land Owner, in respect of a compulsory acquisition of a restriction on use from the Land, undertaken in accordance with clause 6(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
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 Land Owner written notice of the Revised Guarantee or Bond Amounts to apply from the relevant Adjustment Date.
- (c) The 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 Land Owner acknowledges and agrees 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.

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

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 12)

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 and each lot comprising the AMP Precinct]
[#2]	Easement for light and air and building maintenance	[#Airspace Lot]	[#Each Lot and each lot comprising the AMP Precinct]
[#3]	Easement for access and construction	[#Airspace Lot]	[#Each Lot and each lot comprising the AMP Precinct]
[#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 2 of 12)

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 3 of 12)

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 4 of 12)

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 5 of 12)

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 6 of 12)

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 7 of 12)

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
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 12)

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

**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 9 of 12)

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

**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 10 of 12)

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
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 11 of 12)

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

**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 12)

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

SIGNING PAGE

[#insert signature blocks for Council and land owners]

Council Authorised Person

SCHEDULE 9

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 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 (Non-Residential Floor Space)	[#Gallipoli Club Land]	Council of the City of Sydney
[#2]	Restriction on Use (Non-Residential Floor Space)	[#Young and Loftus Street Land] [#Gallipoli Club 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.

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
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]

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
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]

- (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 7)

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 the Lot Burdened 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.

4 Terms of Restriction on Use (Non-Residential Floor Space) numbered [#2] in the Plan

4.1 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.

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]

4.2 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
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CONVEYANCING ACT 1919**

(Sheet 7 of 7)

Plan: [#insert]

Plan of [#insert]

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 Owner]