

9 November 2020

At the conclusion of the Cultural and Community Committee

**Transport, Heritage and Planning
Committee**

Agenda

- 1. Disclosures of Interest**
- 2. Post Exhibition - Planning Proposal - 55 Pitt Street, Sydney - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment**
- 3. Traffic Treatment - Proposed Permanent Road Closure - Morehead Street at James Street, Redfern**
- 4. Fire Safety Report**

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2. Check the recommendation in the Committee report before speaking, as it may address your concerns so that you just need to indicate your support for the recommendation.
3. Note that there is a three minute time limit for each speaker (with a warning bell at two minutes) and prepare your presentation to cover your major points within that time.
4. Avoid repeating what previous speakers have said and focus on issues and information that the Committee may not already know.
5. If there is a large number of people interested in the same item as you, try to nominate three representatives to speak on your behalf and to indicate how many people they are representing.

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Item 1.

Disclosures of Interest

Pursuant to the provisions of the City of Sydney Code of Meeting Practice and the City of Sydney Code of Conduct, Councillors are required to disclose pecuniary interests in any matter on the agenda for this meeting.

Councillors are also required to disclose any non-pecuniary interests in any matter on the agenda for this meeting.

This will include receipt of reportable political donations over the previous four years.

In both cases, the nature of the interest must be disclosed.

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- a **gift** (as defined in the Election Funding and Disclosures Act 1981) to any local councillor or council employee (and includes a disposition of property or a gift of money or the provision of other valuable or service for no consideration or for inadequate consideration) when a relevant planning application is made to a council.

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Item 2.

Post Exhibition - Planning Proposal - 55 Pitt Street, Sydney - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

File No: X027614

Summary

To maintain its role in delivering employment, growth and resilience for the economies of Greater Sydney, New South Wales and the nation, it is important that Central Sydney remains a competitive and attractive place for investment, business, employment and visitors. Capacity for employment growth, opportunities for investment and new development projects should be prioritised. It is important the City is prepared for appropriate development to occur during and after the Covid-19 pandemic.

The Central Sydney Planning Strategy has revised and established the City's planning vision to encourage growth in Central Sydney by setting out opportunities for additional building height and density in the right locations where development delivers high-quality public domain improvements, protects pedestrian amenity and includes environmental sustainability initiatives.

55 Pitt Street, Sydney is located within the Central Sydney's financial, professional and business services core. The site is located in the street block bound by Alfred, Pitt, Dalley and George Streets, also known as the APDG block, which has been the focus of substantial redevelopment in recent years as a result of planning controls that incentivise growth for strategic uses in exchange for significant public domain improvements.

This planning proposal will facilitate the redevelopment of 55 Pitt Street (37-49 Pitt, 49A-57 Pitt Street, 6-8 Underwood Street, 6 Dalley Street and 8-14 Dalley Street), the remaining parcels of land in the APDG block, to allow for a new commercial office tower while retaining essential utility buildings and delivering public domain improvements such as connections to the wider pedestrian laneway network envisaged under the original APDG controls. Council and the Central Sydney Planning Committee approved the planning proposal for public exhibition and Gateway request in May 2020.

This report describes the outcomes of the recent public exhibition of the planning proposal, draft Development Control Plan (DCP) and Voluntary Planning Agreement (VPA) for the site. The planning proposal, draft DCP and VPA were exhibited from 18 September 2020 to 16 October 2020. Twenty-four submissions were received, including two from the landowner and four from public authorities.

Matters raised in submissions include support for the proposal and objections that considered the increase in building height and density excessive, adverse impacts to pedestrian amenity in the public domain and did not support the chosen ecologically sustainable development initiatives. Submissions from the landowner sought clarification of minor amendments to the planning proposal, DCP and VPA, while public authority submissions highlighted legislative and referral obligations required to be fulfilled as part of the assessment of a future detailed development application. A summary of submissions and the City's response is at Attachment A, and issues are also discussed in this report.

Minor amendments to the planning proposal and draft DCP address matters raised from the submissions and are discussed in this report.

This report recommends Council and the Central Sydney Planning Committee (CSPC) approve the planning proposal, draft DCP and notes that the City will enter into the planning agreement.

The gateway determination issued 22 June 2020 delegated authority to Council to liaise directly with Parliamentary Counsel to legally draft and make the Local Environmental Plan to give effect to the planning proposal. The gateway determination is at Attachment E.

If approved, the City will request Parliamentary Counsel commence the preparation of the Local Environmental Plan amendment. The Local Environmental Plan will come into effect when it is published on the NSW Legislation website. The Development Control Plan will come into effect at the same time.

Recommendation

It is resolved that:

- (A) Council note the matters raised in response to the public exhibition of Planning Proposal - 55 Pitt Street, Sydney, and the draft Sydney Development Control Plan 2012 - 55 Pitt Street, Sydney amendment, as shown in Attachment A to the subject report;
- (B) Council approve Planning Proposal - 55 Pitt Street Sydney, as amended following public exhibition and shown at Attachment B to the subject report, and request the relevant local plan making authority make as a Local Environmental Plan under section 3.36 of the Environmental Planning and Assessment Act 1979;
- (C) Council approve draft Sydney Development Control Plan 2012 - 55 Pitt Street, Sydney amendment, as amended following public exhibition and shown at Attachment C to the subject report, noting the approved Development Control Plan will come into effect on the date of publication of the subject Local Environmental Plan;
- (D) authority be delegated to the Chief Executive Officer to make any minor amendments to the Planning Proposal - 55 Pitt Street, Sydney and draft Sydney Development Control Plan - 55 Pitt Street, Sydney amendment to correct any minor errors or omissions prior to finalisation; and
- (E) Council note the Planning Agreement, as shown at Attachment D to the subject report, will be executed under delegation of Council in accordance with the Environmental Planning and Assessment Act 1979.

Attachments

- Attachment A.** Summary of Submissions
- Attachment B.** Planning Proposal - 55 Pitt Street, Sydney (as amended)
- Attachment C.** Draft Sydney Development Control Plan 2012 - 55 Pitt Street, Sydney Amendment (as amended)
- Attachment D.** Planning Agreement
- Attachment E.** Gateway Determination
- Attachment F.** Resolutions of Council and the Central Sydney Planning Committee

Background

1. Central Sydney will continue to play a vital role in the growth and economic success of Greater Sydney and the national economy. It is therefore important that capacity for employment growth, opportunities for investment and new development projects are prioritised to attract investment and highly skilled employees to help boost the economy.
2. The draft Central Sydney Planning Strategy (Strategy) seeks to incentivise additional employment generating floor space through additional building height and floor space in select locations where new development delivers significant public domain improvements where pedestrian amenity and public spaces are protected and environmentally sustainable targets are met.
3. Capacity for employment growth in Central Sydney will contribute to a robust, resilient and competitive economy that will also benefit Greater Sydney and New South Wales. Where there is additional capacity for employment growth, opportunities for investment and globally focused development projects highly skilled jobs will arise. This is particularly important in the current economic climate noting the need to plan for development throughout and after the Covid-19 pandemic.
4. The site is part of the APDG block bound by Alfred, Pitt, Dalley and George Streets as identified in the Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP). The existing APDG controls allow for additional building height and floor space in selected locations subject to public domain upgrades. The composition of the block has been refined over time, through successive planning proposals and development applications. For example a new tower at 11-37 Pitt Street and relocated public plaza fronting George Street is currently under construction and was not envisaged in the original alternate controls.
5. Two planning proposals have previously been lodged for the 55 Pitt Street site. In 2015 and 2017, Mirvac Projects Pty Ltd (Mircac) sought to amend the LEP to increase the building height and floor space ratio building controls. Both proposals were withdrawn due to issues and delays in obtaining formal owner's consent from adjoining utility landowners. Following the withdrawals, the City continued to work with landowners to explore built form outcomes that are consistent with the draft Strategy.
6. Mirvac submitted a revised planning proposal request for 55 Pitt Street in December 2019. The request seeks to amend the APDG alternative controls in the LEP to include site-specific controls for the subject site, consistent with the City's draft Guideline for site specific planning proposals.

7. The amended planning controls will facilitate the renewal of 55 Pitt Street, consisting of the following key components:
 - (a) a 70,000 square metre commercial office tower up to 232m in height, with a 45m high podium;
 - (b) creation of a through-site link widening and connecting Queens Court to Underwood Street;
 - (c) a retail activated pedestrian colonnade along Underwood Street to improve pedestrian connections; and
 - (d) upgrades to facades and roof of the adjoining Ausgrid substation building and facade upgrade and new retail spaces to the Telstra exchange building.
8. At their May 2020 meetings, Council and the Central Sydney Planning Committee (CSPC) approved the planning proposal to seek gateway determination and public exhibition. Council approved the draft DCP and voluntary planning agreement (VPA) for public exhibition at that time.
9. The Department of Planning, Industry and Environment (Department) issued a gateway determination for the planning proposal dated 22 June 2020, approving the planning proposal to proceed to public exhibition. Approval was subject to several conditions, specifying public exhibition was to take place for 28 days and listing the public agencies to be consulted. A further condition on the gateway determination sought for a minor amendment to the planning proposal to provide additional justification on how the proposal is consistent with Ministerial Directions, which has since been included.
10. The planning proposal was publicly exhibited in accordance with the Gateway Determination from 18 September to 16 October 2020. The draft DCP and VPA were exhibited with the planning proposal.
11. The City received 24 submissions. A summary of all submissions, and the City's response, is at Attachment A. Key issues raised in the submissions are discussed later in this report. Following a review and as a result of feedback raised in submissions, the planning proposal has been updated. New amendments are shown in italics and deleted text shown as strikethrough. The draft DCP has been updated accordingly, new amendments are shown in bold italics, deleted text shown as bold strikethrough and updates to the figures are indicated by a red cloud.

Site details

12. The site this planning proposal refers to collectively as 55 Pitt Street, comprises five properties in Sydney's central business district, close to Circular Quay, at 37-49 Pitt Street, 49A-57 Pitt Street, 6-8 Underwood Street, 6 Dalley Street and 8-14 Dalley Street (all otherwise known as 55 Pitt Street or 'the site').

13. The legal descriptions and ownership of the land affected by this planning proposal are:

Mirvac

- Lot 1 DP 513109, known as 49A-57 Pitt Street
- Lots 2-3 DP 1092, Lots 1-2 DP 1112308, Lot 6 DP 75338, Lot 7 DP 110046, Lot 4 DP 524306, known as 37-49 Pitt Street
- Lot 501 DP 714847, known as 6-8 Underwood Street

Telstra

- Lot DP 787946, known as 6 Dalley Street

Ausgrid

- Lots A and B DP 104160, known as 8-14 Dalley Street

14. The site has frontage to Underwood Street to the north and west, Pitt Street to the east and Dalley Street to the south. Queens Court, a short laneway about 25 metres in length, bisects the site along its southern frontage. Queens Court is identified as a public road under the Local Government Act 1993. Public access to Queens Court will be maintained as a part of the planning proposal with occasional access required for service vehicles by Ausgrid.

Existing alternative planning control for the APDG block

15. In 2008, the City commissioned the NSW Government Architect's Office to prepare an urban design study for the APDG block. The key purpose of the study was to develop a consistent set of planning controls that encourage high quality built form and urban design outcomes for both the public and private domain. Completed in 2009, the study recommended a large centrally located public square, retail activated pedestrianised laneways and three tower buildings. Additional building height would be considered in exchange for significant public domain improvements.
16. Adopted as an alternative scheme by Council and the CSPP on 15 and 11 November 2010, respectively, a number of LEP and DCP amendments based on the recommendations of the urban design study as developed came into effect on 29 April 2011.
17. Since 2009, land ownership across the APDG block has changed significantly, making it difficult to achieve the intended built form and public domain outcomes. Adjustments to the APDG provisions have been therefore to ensure the original vision is delivered.
18. A planning proposal was approved by Council in 2015 to amend the LEP to facilitate the redevelopment of 33 Pitt Street. Introducing a second option for the delivery of the APDG block and created a new development block, known as 'block 4'. Development on block 4 includes a new office tower and relocates the public plaza to front George Street. These amended alternative controls in the LEP and DCP came into effect in December 2016. The development of block 4 has meant that block 1 cannot be developed under the current controls. New controls for the remainder of block 1 are the subject of this planning proposal and are required to facilitate the redevelopment of the subject site.

Indicative scheme

19. The indicative scheme for 55 Pitt Street envisages a new 50 storey commercial tower 232 metres in height, with approximately 70,000 square metres of office floor space, more than 500 square metres of retail space and a new through-site link, connecting Queens Court with Underwood Street.
20. The future tower will front and have a street address to Pitt Street. Vehicle access will be from Dalley Street to three basement levels, off street loading, end of journey facility and car parking. The proposal includes upgrades to the adjacent Telstra and Ausgrid utility buildings.

Planning proposal - amendments to the Sydney LEP 2012

21. The planning proposal at Attachment B proposes to amend the APDG precinct controls to:
 - (a) identify the subject site as a new development option, block 5, for the appropriate distribution of built form and floor space within the APDG block;
 - (b) permit a maximum building height of 232 metres with the tower comprising no more than 44 percent of the area of the block;
 - (c) allow a maximum floor space ratio of 15.02:1, comprising:
 - (i) mapped floor space ratio of 8:1;
 - (ii) accommodation floor space of 4.5:1;
 - (iii) site specific floor space of 2.52:1; and
 - (iv) additional floor space up to 10% if the building demonstrates design excellence, to a maximum floor space ratio of 16.52:1;
 - (d) ensure development consent can only be granted if the proposal delivers employment generating uses, a through-site link and improvements to the Ausgrid and Telstra utility buildings; and
 - (e) permit for the purposes of calculating the gross floor area for block 5, the inclusion of floor space ratio generated by the adjoining Telstra and Ausgrid sites to be transferred for the use on the subject site.

Site specific draft Development Control Plan

22. A site specific draft DCP is at Attachment C to this report and provides further guidance for development of the site consistent with the proposed amendments to the LEP. The draft DCP provisions include:
 - (a) building form and external appearance;
 - (b) tower location;
 - (c) setbacks;
 - (d) street frontage heights;
 - (e) environmental impacts;

- (f) vehicular access;
- (g) design excellence; and
- (h) environmentally sustainable development targets.

Voluntary Planning Agreement

23. A voluntary planning agreement at Attachment D to this report was prepared and exhibited concurrently with the planning proposal and draft DCP. The public benefits that will be delivered are:
- (a) monetary contribution to community infrastructure in Central Sydney;
 - (b) monetary contribution to affordable housing in the local government area;
 - (c) provision of public art on the site;
 - (d) dedication of land for footpath widening on Underwood Street;
 - (e) construction of the Underwood Street footpath widening; the through-site link incorporating Queens Court; improvements to the colonnade of the Telstra building and public art to the through-site link (if required);
 - (f) creation of public access easements for the Telstra colonnade and the through-site link; and
 - (g) ecologically sustainable development targets:
 - (i) minimum 6 star Office Green Star v1.3 Design and Construct rating;
 - (ii) minimum 5.5 star rating on operation under the NABERS energy scheme; and
 - (iii) minimum 4-star rating in operation under the NABERS water scheme.

Key Implications

Outcomes of public exhibition and public authority consultation

24. The planning proposal, draft DCP and planning agreement were exhibited from 18 September to 16 October 2020.
25. The City sent over 160 letters to landowners and occupants to notify them of the public exhibition and provided information on how to view the supporting documentation. The exhibition was also advertised in the Sydney Morning Herald and featured on the City's Sydney Your Say website.
26. Public authority consultation was carried out in accordance with the gateway determination. The Heritage Council of NSW, Sydney Water, Sydney Airport Corporation, Air Services Australia, Commonwealth Department of Infrastructure and Regional Development, Civil Aviation Safety Authority and Transport for NSW were consulted.

27. In their submission, Transport for NSW raised no significant issues, but noted the subject development is located within the Sydney Metro Corridor, above the Chatswood to Sydenham section of the Sydney Metro tunnels that are currently under construction and as such, the proposal is subject to the relevant provisions of the State Environmental Planning Policy (Infrastructure) 2007 (Infrastructure SEPP). Furthermore, the submission advised that any subsequent detailed development application is to include a detailed traffic and transport assessment to identify any traffic and transport impacts that may arise from the subject development.
28. In their submission, the Commonwealth Department of Infrastructure and Regional Development advised that the change to the maximum permissible building height will result in a penetration of the prescribed airspace for Sydney Airport and the future detailed development application would constitute a controlled activity and require consultation and approval from Sydney Airport before development consent can be granted.
29. Heritage NSW raised no objection to the proposal. They noted the site is close to the State Heritage listed Tank Stream and the identified mitigation measures to minimise impact on this item are appropriate and acceptable. The submission also noted that the future detailed development application should be informed by a detailed historical archaeological impact assessment and include consultation from Heritage NSW on mitigation and management strategies. A provision has been included in the DCP to ensure Heritage NSW is consulted in preparation of the detailed development application to minimise impacts on the Tank Stream.
30. Sydney Metro advised that while the planning proposal is not subject to the provisions of the Infrastructure SEPP, any future development application that involves more than two metres of excavation will trigger concurrence requirements. Furthermore, Sydney Metro request consultation with the landowner prior to the lodgement of the detailed development application to review interfaces between the proposed development and Sydney Metro infrastructure. While a future development application will trigger concurrence requirements with Sydney Metro, the DCP has been updated to include a provision to ensure Sydney Metro is consulted during preparation of the detailed development application to further ensure impacts to the Metro corridor are minimised.
31. Sydney Water raised no objection to the proposal, noting that the detailed development application will require formal approval from Sydney Water. They recommended the proponent consult with Sydney Water in preparing relevant studies to meet waste and storm water servicing requirements.
32. The Civil Aviation Safety Authority (CASA) advised that they did not object to the proposal, however noted that due to the height of the planning envelope, the detailed development application would require controlled activity approval from Sydney Airports, who will also consult and include comments from stakeholders including CASA.
33. A total of 24 submissions was received in response to the exhibition.
34. The City's response to the issues raised in submissions are discussed below and in the submissions table at Attachment A.

Additional building height and floor space

35. During public exhibition, six submissions were received in support of the proposed scheme, noting the necessity to refresh ageing building stock with a proposal that includes additional public space and improved public domain while positively contributing to the skyline.
36. Six submissions objected to the proposal, opposing the height and density changes. These submissions stated that, at 232 metres in height, the building is considered too tall, beyond a human scale and is too close to adjacent towers and constitutes overdevelopment on the subject site without providing a benefit to the future of Sydney.
37. The proposal to increase building height and floor space capacity is consistent with the aims of the draft Central Sydney Planning Strategy which allows development potential for this site and opportunities for economic growth in Central Sydney on suitable sites.
38. It is considered that, the proposed new commercial office tower will be consistent with the future surrounding context, as the site is located in a future tower cluster identified in the Strategy and draft Central Sydney planning proposal. Tower clusters have been designated as locations where additional building height and density may be accommodated without overshadowing key public spaces and deliver additional employment generating floor space. Such projects are required to deliver key sustainability targets and ensure the protection of acceptable public domain amenity. The height of the tower is also consistent with the heights envisaged under the Strategy for this location.
39. This planning proposal introduces an alternative building height of 232 metres for the subject site, by amending the APDG provisions in the LEP. By delivering significant public domain improvements, new pedestrian laneways and other links throughout the site, the proposal delivers on the objective for clause 6.25 of the LEP and as such meets the requirements for additional building height at this location.
40. The proposed indicative development concept includes a maximum building height of 232 metres on no more than 44% of the block, to accommodate up to 50 storeys of new office floor space. New active uses and ground floor retail will be included in the podium, which will front an upgraded public domain, comprising of a new north-south through-site link achieved by extending Queens Court north to form a new connection with Underwood Street, which will feature an east-west pedestrian colonnade. These new pedestrian connections will connect to the wider pedestrian laneway network that is currently being delivered across the APDG block, providing more accessible open space and activated pedestrian laneways that will be suitable for public sitting or outdoor dining.

Adverse public domain amenity impacts

41. Three submissions objected to the proposal due to its adverse impact on public domain amenity. These submissions argued that, due to the modified setbacks and proximity to adjacent buildings, the proposed envelope would heavily restrict natural light, will not provide sufficient views to the open sky and exacerbate wind impacts, creating a wind tunnel for pedestrians in the public domain.
42. It is considered that the planning proposal delivers on the objective of the APDG block by providing for additional building height in a high-quality built form that delivers an improved public domain with new pedestrian connections. A proposed tower has been envisaged in this location since the controls were initially developed.

43. The proposal is also consistent with a key move of the draft Central Sydney Planning Strategy in that additional building height and density may be unlocked where the project does not result in adverse wind and daylight impacts in the public domain. The proposed indicative scheme has been developed to minimise any adverse environmental impacts, including excessive wind speeds. To ascertain the impacts of the proposal on the surrounding environmental amenity, the Strategy establishes a base case building envelope against which a planning envelope must demonstrate improved or equivalent performance. Further testing will be required at the development application stage.
44. The Urban Design Study that accompanied the planning proposal request included a daylight analysis that found the proposed envelope will maintain daylight levels in the public domain equivalent to the base case envelope. The planning envelope as outlined in this planning proposal is therefore consistent with the requirements for daylight levels under the Strategy. Further testing will be required at the development application stage.
45. A detailed Wind Impact Assessment accompanied the planning proposal, which assessed pedestrian wind comfort. The assessment included wind tunnel equivalence testing to determine the impacts of the proposed planning envelope on wind conditions. The assessment found that public domain conditions would generally remain suitable for pedestrian walking activities, however there were some areas that required some mitigation to ensure that the wind conditions matched the character of the location. For example, while conditions would remain calm in Dalley Street and Underwood Street, a high-level glazed roof/awning above the enhanced Queens Court through-site link would provide for a comfortable environment, suitable for dwelling, seating and outdoor dining to complement the fine-grain retail spaces that are proposed to front the laneway. The draft DCP includes provisions for a high-level glazed roof/awning above the Queens Court through-site link.
46. The planning proposal was accompanied by an Urban Design Study that included a detailed shadow analysis that demonstrated the proposed planning envelope will not result in any additional overshadowing to nearby identified public places, including Macquarie Place Park and Australia Square plaza.

Ecological sustainable development

47. One submission did not support the proposed changes in consideration of ecologically sustainable development, noting the selected programmes were too simplistic and for a development of this scale, sustainability should be a central focus of the project and that the NABERs and Green Star systems have serious flaws.
48. The proposed development concept is required to achieve the ecological sustainable development targets, which have been agreed to and secured through a planning agreement. The target ESD ratings are consistent with the City's current minimum sustainability targets and include a 5.5 star NABERs energy rating, 4 star NABERs water rating and 6 star Green Star office rating. The NABERs and Green Star initiatives are industry standards and widely used on new and existing developments across New South Wales and Australia and are well-suited for inclusion in planning commitments.

49. Notwithstanding the criticisms of the NABERs and Green Star rating systems, the draft DCP includes measures to ensure future development on site will deliver significantly improved environmental performance and sustainability outcomes. The proposal includes further ESD initiatives that go beyond the above programs. The Ecologically Sustainable Design Statement that accompanied the planning proposal details specific sustainability initiatives that are to be implemented throughout the whole lifecycle of the building. Initiatives secured in the VPA as part of Green Star system include construction environment management, building metering and monitoring systems and operation waste management to divert from landfill in the operation phase. The ESD provisions in the DCP ensure that future development on site will net-zero carbon, zero waste and water efficient outcomes.

Heritage

50. One submission suggested that one of the existing buildings that comprises the 55 Pitt Street site, 49A-57 Pitt Street, is worthy of heritage listing as a remaining example of Post war international style medium-rise office buildings that was formerly prevalent across the area.
51. In 2017-2018, the City conducted a review of modernist buildings within the local government area, to ensure that the best examples of this architectural period were identified, assessed and heritage listed to ensure their conservation. This review included an assessment of many buildings of this architectural style and 49A-57 Pitt Street was not identified for heritage listing in the recent proposal.
52. Demolition of buildings on the land has been anticipated in the vision for the APDG block in the LEP and DCP to facilitate the redevelopment of the whole block and deliver significant improvements to the public domain and pedestrian network. Furthermore, the planning proposal was accompanied by a Heritage Impact Statement supported by Council's heritage specialists which did not consider any of the existing buildings on site to be of sufficient significance to justify its retention or listing.

Economic and public domain benefits

53. Several submissions welcomed the proposal and the economic benefits it would have on Central Sydney's economy in providing future opportunities for jobs. The planning proposal will also provide necessary local improvements to the streetscape and accessibility in the area.
54. These comments are noted. Capacity for future employment growth in Central Sydney is important to ensure the New South Wales economy can deliver resilience and future growth for recovery. This planning proposal provides for additional employment floor space to increase the capacity of new jobs and investment, as well as public domain improvements and the delivery of the City's long held vision for this block.

Heritage floor space

55. In a submission from the landowner, further clarification on the application of heritage floor space (HFS) and include references for the proposal to access the alternative heritage floor space allocation scheme was raised.

56. This planning proposal does not seek to change the application of the existing heritage floor space provisions as contained within the LEP. The APDG block provisions under clause 6.25 of the LEP will be amended to detail the proposed planning envelope for 55 Pitt Street and will direct future development to the operation of the heritage floor space scheme pursuant to clause 6.11.
57. The alternative heritage floor space scheme provides temporary measures for allocating HFS for new developments in Central Sydney. The scheme was introduced to address a temporary shortage of available HFS. A proponent is required to demonstrate real and ongoing efforts to acquire HFS and that they have been unable to secure the required amount. The alternative arrangements are secured through a planning agreement and are triggered by a modification application to amend the relevant condition in the development consent. As such, it is not necessary to modify this planning proposal to reference the alternative scheme as this will need to be addressed following a detailed development application, and only as required.

Lanes development floor space

58. The landowner points out that in their initial request, the planning proposal was to include an amendment to the Lanes Map of the LEP to reflect the Queens Court through-site link to ensure future development is eligible for lanes development floor space under clause 6.8 of the LEP.
59. The planning proposal has been updated to include the extended Queens Court through-site link on the Lanes Map and the draft provisions have been amended to include reference to clause 6.8 of the LEP to reflect the application of lanes development floor space as initially omitted.

Queens Court through-site link

60. In their submission, the landowner notes minor discrepancies between the proposed indicative scheme and the planning proposal, including a 10m glazed awning height above the through-site link and accommodating double height retail spaces between the basement and the ground floor.
61. Draft DCP provision 6.1.5.2(18)(c) states that a high-level glazed roof/awning is to be included above the Queens Court through-site link at a minimum height of 10metres above ground level. This is to ensure that Queens Court continues to feel as an outdoor space to pedestrians and diners and a visual connection is maintained between any double-height retail spaces and the laneway to maximise activation. In their submission, the landowner states that while this remains their intention, the indicative design indicates that the awning is able to align with the juncture between the first and second floors at a height of 9.2 metres above ground level. As such, the provision and relevant figure in the draft DCP has been updated to reflect the above.
62. The provisions in the draft DCP seeks to maximise the amount of retail activation that fronts the Queens Court through-site link by encouraging double height retail spaces that may link from the ground floor to the basement or first floor. However, in their submission, the landowner has indicated that it is unlikely that retail space will be able to be accommodated in the basement of the building due to site constraints such as potential flooding. As such, this provision has been reworded to provide flexibility in the provision of fine grain retail fronting the through-site link.

Design excellence

63. One submission highlighted the need for the Design Excellence Strategy to include criteria of Diversity and Inclusion for competitors and jury, as a diverse community requires a diversity of built form practitioners. The landowner also made a submission regarding minor amendments to the proposed design excellence provisions.
64. The Design Excellence Strategy has not been amended to include this change. The current policy does not require the detailed membership of the jury to form part of the strategy. Nevertheless, the proponent has put forward a jury with equal gender representation. The draft update to the Design Excellence provisions for tower cluster areas in Central Sydney currently includes requirements for gender representation and will be a guideline following adoption by Council.
65. In their submission, the landowner sought clarification on whether the design excellence provisions in the draft DCP should reference the draft APDG provisions that refer to the provision of additional floor space rather than the existing provisions under clause 6.21(7)(b). The proposed LEP provisions references the applicable clause for the application of additional floor space should the building exhibit design excellence. The draft DCP has been updated to reference the draft LEP provisions accordingly.

Tower setbacks

66. One submission raised concern about the proposed tower setbacks between the proposal and the tower under construction at 37 Pitt Street. The submission states the tower element of the planning envelope is setback three and four metres from Underwood Street, resulting in reduced sun and daylight access to the public domain. Sky views are significantly reduced, resulting in an erosion of the benefits from the wider Underwood Street footpath. Consideration should be given to the tower setback from Underwood Street and retaining the APDG tower setback of eight metres. The submission also states the proximity of the two towers compromises privacy for the office areas and consideration of privacy should be included in the design competition brief. It is noted that both towers include limited setbacks as a result of limited site area and tower floor space requirements. The adjacent tower includes a nil setback along its southern boundary, however as this is predominantly building core privacy concerns are limited to the north-east corner of the subject site. The Building Design provisions in the DCP has been updated to ensure sufficient treatments are included to minimise any privacy impacts to adjacent towers.
67. Setbacks help manage impacts to amenity and environmental conditions, including wind, daylight access and privacy. The draft Strategy generally recommends an 8 metre setback and allows setbacks to be varied where the proposal can demonstrate equivalent daylight access is maintained compared to the performance of a base case envelope.
68. The planning proposal was accompanied by a daylight analysis in the Urban Design Study that compared the impact of the planning envelope on daylight levels in the public domain as compared to the base case envelope. The analysis demonstrated that overall, the proposal is capable of maintaining equivalent levels of daylight access to surrounding public domain and is considered acceptable. Furthermore, the east-west section of Underwood Street will include a publicly accessible colonnade, replicating the current pedestrian conditions. Increasing the tower setbacks on the northern boundary will not result in a significant increase to pedestrian daylight levels along the colonnade.

Underwood Street

69. One submission requested Figure 6.8A - Streets, Lanes and Through-Site Links - Option B of the draft DCP be corrected as the legend for Lane Type C places a time limit on vehicles using the east-west section of Underwood Street. That section of Underwood Street currently provides vehicle access to the basement carpark of Sydney Place at 37 Pitt Street.
70. Regulation of the use of the roadway takes place under the Roads Act 1993 and is not governed by the planning controls. The planning controls set out the available space of the roadway suitable for its intended future use. The draft DCP includes a provision to ensure development on site will not impact the future conversion of adjacent roadways to shared zones. The draft DCP has been updated to remove reference 'No vehicle access 8am-6pm Monday to Friday' from the legend in Figure 6.8A as it relates to Lane type C for the east-west section of Underwood Street.

Drafting instructions

71. The adjacent landowner's submission suggested minor amendments to the drafting instructions in the planning proposal to correct errors and provide clarification. The requested amendments and the City's responses are included below:
- (a) Clause 6.25 (3A): correct first sentence to remove redundant words - The planning proposal has been updated to delete (shown as strikethrough) the duplicate words;
 - (b) Clause 6.25 (3A)(d): include specific clause reference at the end of this paragraph to replace 'within the meaning on that clause' - Noted, the draft provisions in the planning proposal have been updated (shown in italics) to reference the specific clause as follows "building demonstrating design excellence as defined under clause 6.21(9)";
 - (c) Clause 6.25 (8)(b): correct the paragraph to ensure it is specific to 55 Pitt Street (block 5) - clause 6.25 (8) defines block 5 and includes lot descriptions, the ensure the draft provisions are clear, the planning proposal has been updated to include "sub" clause in 6.25 (8)(b); and
 - (d) Clause 6.25 (8)(c) should apply to block 5 and not all of the APDG block - to ensure the land to which these provisions apply, the planning proposal has been updated to include "sub" clause in 6.25 (8)(c).

Planning agreement amendments

72. The landowner, in a submission, indicated that some minor changes were needed to be made to the instruments plan included in the planning agreement to reflect the correct land to be burdened by positive covenants with respect to the through-site link and colonnade as well as the blast wall, if constructed.
73. Noted. No objection to these minor changes is raised by the City as they will not change the public benefits and the VPA will be amended prior to execution.

Strategic Alignment - Greater Sydney Region Plan

74. A Metropolis of Three Cities - The Greater Sydney Region Plan is the NSW Government's overarching strategic plan for growth and change in Sydney. The 20 year plan provides a 40 year vision that seeks to transform Greater Sydney into a metropolis of three cities. It outlines how Greater Sydney will manage growth and change will guide infrastructure delivery.
75. The Greater Sydney Region Plan is to be implemented at a local level by District Plans. This planning proposal is consistent with the following relevant directions and objectives of the Plan:
- (a) Infrastructure - redevelopment of the site will benefit from additional transport infrastructure capacity and will contribute towards the delivery of new community infrastructure.
 - (b) Liveability - the future development concept includes retail activation of the future laneway network, consistent with the APDG vision and will encourage greater public domain activity.
 - (c) Productivity - the proposal will deliver additional office floor space close to transport connections contributing towards Central Sydney's economy.
 - (d) Sustainability - this planning proposal will facilitate the redevelopment of the site with a new building featuring improved sustainability outcomes.

Strategic Alignment - Eastern City District Plan

76. The Eastern City District Plan sets the local planning context for the Eastern City District, which includes the City of Sydney local government area and provides a 20 year plan to manage growth. This planning proposal gives effect to the following relevant planning priorities from the plan:
- (a) Planning Priority E1 - Planning for a city supported by infrastructure
 - (b) Planning Priority E7 - Growing a stronger and more competitive Harbour CBD
 - (c) Planning Priority E10 - Delivering integrated land use and transport planning for a 30 minute City
 - (d) Planning Priority E11 - Growing investment, business opportunities and jobs in strategic centres
 - (e) Planning Priority E13 - Supporting growth of targeted industry sectors
 - (f) Planning Priority E19 - Reducing carbon emissions and managing energy, water and waste efficiently.
77. This planning proposal supports the above key directions of the Plan in that it will provide additional employment space to support productivity in Central Sydney through the delivery of a premium quality office building in a highly-accessible location; promote sustainable redevelopment of the APDG block; complement the new light rail and proposed cycle network; and provide for recreation and retail activities.

Strategic Alignment - Sustainable Sydney 2030

78. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
- (a) Direction 1 - A Globally Competitive and Innovative City - the proposal will support a future high quality outcome, delivering more employment and investment opportunities, helping make Central Sydney attractive to global investors.
 - (b) Direction 2 - A Leading Environmental Performer - this planning proposal facilitates new ecologically sustainable development onsite, ensuring future development achieves ambitious targets.
 - (c) Direction 3 - Integrated Transport for a Connected City - the site is well located to capitalise on existing and future public transport infrastructure including the nearby Circular Quay train station, light rail and bus stops and the future Metro stations in Central Sydney.
 - (d) Direction 4 - A City for Walking and Cycling - the proposal will support a more people-oriented city through the delivery of enhanced and retail activated laneways and a new through-site link.
 - (e) Direction 5 - A Lively and Engaging City Centre - a mix of active uses including fine grain retail will deliver improved levels of activation to this part of Central Sydney, contributing to a livelier, engaging city.
 - (f) Direction 6 - Vibrant Local Communities and Economies - this planning proposal will enhance Central Sydney with increased business opportunities for investment, employment and new facilities for local residents and visitors.
 - (g) Direction 7 - A Cultural and Creative City - the planning agreement that accompanies this planning proposal ensures public art is delivered as part of the future concept for the site, providing new creative and cultural experiences.
 - (h) Direction 8 - Housing for a Diverse Population - this planning proposal will facilitate a contribution towards the provision of affordable housing in the City of Sydney local government area.
 - (i) Direction 9 - Sustainable Development, Renewal and Design - future development will be subject to ambitious sustainability benchmarks.

Strategic Alignment - Local Strategic Planning Statement

79. The City of Sydney's Local Strategic Planning Statement sets out the land use planning context, 20 year vision and planning priorities to positively guide change towards the City's vision for a green, global and connected city.

80. This planning proposal gives effect to the following priorities of the Statement:

Infrastructure

- I1. Movement for walkable neighbourhoods and a connected city
- I2. Align development and growth with supporting infrastructure
- I3. Supporting community wellbeing with social infrastructure

Liveability

- L5. Creating great places

Productivity

- P7. Growing a stronger, more competitive Central Sydney

Sustainability

- S11. Creating better buildings and places to reduce emissions and water and use water efficiently.

Strategic Alignment - Central Sydney Planning Strategy

81. Central Sydney plays a critical role in the continued growth and economic success of Greater Sydney, the state and the national economy due to its position as the economic heart of Australia's most global city. The draft Central Sydney Planning Strategy sets a planning approach to grow employment and productivity create high quality places and deliver on the City's Sustainable Sydney program.
82. The Strategy includes opportunities for additional height and density in the right locations, balanced with environmental sustainability initiatives, and sets criteria for excellence in urban design.
83. This planning proposal is aligned with the following relevant key moves of the Central Sydney Planning Strategy:
 1. Prioritise employment growth and increase capacity - this planning proposal will help contribute to growth within Central Sydney by facilitating the delivery of additional commercial floor space and increasing employment capacity.
 2. Ensure development responds to context - the provisions contained within the draft DCP ensures that future development will be responsive to its context and will not result in adverse impacts in the public domain.
 4. Provide employment growth in new tower clusters - the subject site is located in an identified tower cluster in Central Sydney where additional building height and floor space may be accommodated.
 5. Ensure infrastructure keeps pace with growth - in accordance with the guidelines, this planning proposal facilitates a contribution towards community infrastructure in Central Sydney and towards the provision of affordable housing within the local government area.

6. Move towards a more sustainable city - the planning agreement that accompanies the planning proposal includes ambitious sustainability targets.
8. Move people more easily - the subject site is well placed to benefit from the recent and planning upgrades to the surrounding public transport network such as the light rail, future metro and upgrades to the pedestrian and cycle network.
9. Commitment to design excellence - future development will be subject to an architectural design competition.

Relevant Legislation

84. Environmental Planning and Assessment Act 1979.
85. Environmental Planning and Assessment Regulations 2000.

Critical Dates / Time Frames

86. The gateway determination requires that the amendment to the Sydney LEP 2012 is completed by June 2021.
87. The gateway determination authorises Council to exercise this delegation and liaise directly with Parliamentary Counsel to draft and make the local environmental plan. If the planning proposal is approved by Council and CSPP, the City will commence this process. Once this process is complete and the plan is made, the amendment to the Sydney LEP 2012 will come into effect when published on the NSW Legislation website.
88. If approved by Council, the revised DCP will come into effect on the same day as the amendment to the LEP.
89. The planning agreement is to be executed prior to the finalisation of the amendments to the LEP and DCP.

GRAHAM JAHN AM

Director City Planning, Development and Transport

Daniel Thorpe, Specialist Planner

Attachment A

**Summary of Submissions
55 Pitt Street, Sydney**

Attachment A
Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
1.	Department of Infrastructure, Transport, Regional Development and Communications	<p>Sydney Airport controlled activity – The proposed change to the maximum permissible building height will result in a penetration of prescribed airspace for Sydney Airport. Prescribed airspace includes the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services - Aircraft Operations (PANS-OPS) surface for the airport.</p> <p>Construction of a development to a height above 156 metres AHD would result in an intrusion into the OLS and as such, constitute a controlled activity under the Act. Controlled activities cannot be carried out without prior approval from the Department of Infrastructure, Transport, Regional Development and Communications.</p>	Noted. A detailed development application will require concurrence from Sydney Airport as the proposed works penetrate the Operations Limitation Surface height of 156 metres. This is consistent with clause 7.16 of the LEP and under the Airports Act 1996.
2.	Transport for NSW	<p>Raise no significant issues – Note the site is within the Sydney Metro corridor. Any future development applications must comply with relevant guidelines and be referred to TfNSW and Sydney Metro. A detailed development application is to include a Traffic and Transport Impact Assessment to identify traffic and transport impacts associated the proposed development.</p> <p>Shared / Pedestrian zones – Section 6.1.5.2 of the draft DCP states that the building is to be planned and designed to accommodate the future conversion of Dalley and Underwood Street into shared and/or pedestrian zone with associated stormwater works.</p> <p>Any approved shared zones would need to be designed and implemented in accordance with TfNSW Technical Direction 2016/001 (TD). TfNSW would be pleased to review any application for a shared zone which includes an investigation on whether the circumstances justify the application for such a facility. If the traffic flows are higher than what is recommended in the TD, then further justification would need to be provided to TfNSW on why the shared zones would be appropriate.</p>	Noted. A traffic and transport assessment is a standard requirement for large applications.
3.	Heritage NSW	<p>Tank Stream – The subject site is located directly adjacent to the State Heritage Register (SHR) listed ‘Tank Stream’ (SHR 00636), which runs under Pitt Street directly to the east of the site.</p> <p>It is understood that the development permitted by the planning proposal would include three levels of basement consisting of an off-street loading dock, end of trip facility and car parking. Given the vicinity of the proposed basement to the ‘Tank Stream’ care must be taken to avoid any impacts on this important State Heritage Register item.</p> <p>We note that the Heritage Impact Statement identified the following mitigation measures in relation to the Tank Stream:</p> <ul style="list-style-type: none"> • impact on the Tank Stream or within its 3m curtilage (protection zone) must be avoided. • development work within a 10m buffer zone should be approved by a suitably qualified structural engineer in accordance with the Tank Stream CMP (2005), and • consultation with Sydney Water will be required for the Stage 2 DA and for any investigative works that may impact on the Tank Stream. <p>The above controls are considered appropriate and acceptable.</p>	Noted. A provision has been included in the DCP to ensure Heritage NSW is consulted in preparation of the detailed development application to minimise impacts on the Tank Stream.

Attachment A
Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
		<p>Historical Archaeology – It is noted the preliminary analysis undertaken for the Heritage Impact Statement concluded there was potential for historical archaeology within the subject site, and the Stage 2 DA should:</p> <ul style="list-style-type: none"> • be informed by a detailed historical archaeological impact assessment in accordance with NSW Heritage Division guidelines, and • consultation with the NSW Heritage Division (now Heritage NSW) to agree on recommended mitigation and management strategies. 	Noted. The draft DCP has been updated to ensure the landowner consults with Heritage NSW while preparing the detailed development application.
		<p>Local Heritage – the site is also located nearby to several Local heritage items listed on Council’s LEP. As these items are listed under your LEP, Council is the consent authority, and the assessment and consideration of any impacts rests with Council. Prior to finalisation of the planning proposal, Council should be satisfied that all necessary due diligence, assessments and notifications have been undertaken.</p>	Noted
4.	Sydney Metro	<p>Concurrence/consultation- Sydney Metro is the relevant rail authority for the Sydney Metro – City & Southwest rail corridor for the purpose of the Infrastructure SEPP. Sydney Metro understands that the Planning Proposal proposes to amend base controls for the subject site stipulated by the Sydney LEP 2012. The proposal aims to deliver approximately 70,000sqm of commercial office floor space in a new 50 storey tower with ground floor retail and active uses opening to new and upgraded public domain, pedestrian colonnade and through-site link. As this is a Planning Proposal, the provisions of clause 86 of the State Environmental Planning Policy (Infrastructure) do not apply. However, future development applications with more than 2 metres of excavation will trigger concurrence under the Infrastructure SEPP.</p> <p>Sydney Metro requests consultation with the Applicant prior to a DA being lodged to assess and review interfaces between a proposed development and Sydney Metro infrastructure.</p>	Noted. While future development will trigger concurrence requirements with Sydney Metro, the DCP has been updated to include a provision to ensure Sydney Metro is consulted during preparation of the detailed development application to further ensure impacts to the Metro corridor are minimised.
5.	Civil Aviation and Safety Authority	<p>Sydney Airport controlled activity – At this stage, CASA has no objections to the proposal however, once the building has been assessed from an obstacle perspective, mitigations such as obstacle lighting may be required.</p> <p>It is assumed that the maximum building height is 232m above ground level, which could make the maximum height approximately 250m above Australian Height Datum. At this height, the building will infringe prescribed airspace for Sydney Airport as it will penetrate the Obstacle Limitation Surfaced known as the Outer Horizontal Surface (elevation 156m AHD). The proposal will therefore require a controlled activity approval from the Department of Infrastructure, Transport, Regional Development and Communications (DITRDC) under the Airports (Protection of Airspace Regulations) 1996 (the Airspace Regulations).</p> <p>In accordance with the Airspace Regulations, when the height of the development has been confirmed, the proponent should seek the controlled activity approval through Sydney Airports Corporation Ltd (SACL). SACL will confirm the infringement and obtain comments from stakeholders, including CASA and Air Services Australia and refer the application to DITRDC. CASA will assess the building from an obstacle perspective when a request for comment is received from CASA.</p>	Noted. A detailed development application will require concurrence from Sydney Airport as the proposed works penetrate the Operations Limitation Surface height of 156 metres. This is consistent with clause 7.16 of the LEP and under the Airports Act 1996.
6.	Sydney Water	<p>Storm and waste water servicing – Sydney Water has no objection to the proposal, however, due to its scale and complexity, we request that the proponent lodges a Feasibility study with Sydney Water for the proposed development. The proponent should contact a Water Servicing Coordinator to lodge this study on their</p>	Noted. The future development application will require approval from Sydney Water. A provision is included in the DCP to ensure appropriate consultation is undertaken.

Attachment A
Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
		<p>behalf. Any potential upsizing of our local assets or limitations in our system will be defined with the Feasibility process.</p> <p>Stormwater – As the subject proposal is to increase the Floor Surface Ratio and the building height, Sydney Water has no specific stormwater requirements for this proposal. If any proposed development is going to generate trade wastewater, the developer must submit an application requesting permission to discharge trade wastewater to Sydney Water’s wastewater system. The applicant must wait for the approval and issue of a permit before any business activities can commence. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the Land Development Manual.</p>	

Attachment A
Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
7.	Landowner	<p>Heritage floor space – Further clarity around the operation of HFS is sought. It is noted that amended Clause 6.25 proposes for Clause 6.11 to continue to apply. Is it the intent that HFS will apply to the 10% design excellence floor space? The proposed wording suggests will only be applicable to accommodation floor space.</p> <p>Is there also a need for amended Clause 6.25 to include reference to 6.11A as being applicable?</p>	<p>The planning proposal does not seek to change the application of the existing heritage floor space provisions as contained in clause 6.11 of the LEP or as it applies in relation to design excellence floor space. This planning proposal will amend the APDG provisions to detail the proposed planning envelope for 55 Pitt Street and direct future development to the operation of the heritage floor space scheme pursuant to clause 6.11 of the LEP, which details how heritage floor space applies in relation to design excellence floor space</p> <p>The alternative heritage floor space allocation scheme provides temporary measures as an alternative to allocating HFS for new developments in Central Sydney pursuant to clause 6.11A of the LEP. The scheme was introduced to address a shortage of available HFS for which a developer is required to demonstrate real and ongoing efforts to acquire HFS were made and they were unable to secure the required amount. The alternative arrangements are secured through a planning agreement and are triggered by a modification application to amend the relevant condition in the development consent.</p> <p>As such, it is not necessary to modify this planning proposal to reference the alternative scheme as this will need to be addressed following a detailed development application, and only as required.</p>
		<p>Lanes development floor space – The proponent's original planning justification report proposed an amendment to the Lanes Map (Sheet 14) within the LEP in order to reflect the proposed Queens Court Through-site link/laneway. The planning proposal that was progressed and placed on exhibition did not however propose any amendment to the Lane Map. This appears to be an error and accordingly it is requested that Council amend the Lanes Map accordingly.</p>	<p>The planning proposal has been updated to include the extended Queens Court through-site link on the Lanes Map and the draft provisions have been amended to include reference to clause 6.8 of the LEP to reflect the application of lanes development floor space as initially omitted.</p>
		<p>Queens Court – glazed awning – The Streets, Lanes and Through Site Links - Option B Figure 6.8A includes a reference and section of the proposed through-site link. It is recommended that this Figure (specifically through-site link C) is updated to include reference to the glazed awning and ensure better alignment with the DCP text.</p>	<p>Provision 6.1.5.2(18)(c) of the draft DCP currently states that a high-level glazed roof/awning is to be included above the Queens Court through-site link at a minimum height of 10 metres above ground level. This is to ensure that Queens Court continues to feel as an outdoor space to pedestrians and diners and a visual connection from any double-height retail spaces is maintained to maximise activation.</p>
		<p>Queens Court – glazed awning – It is noted that the proposed section 6.1.5.2 (18)(c) identifies a minimum height for the Queens Court glazed awning of 10m. The indicative design prepared in support of the planning proposal includes the glazed awning with a height sitting around 9.2-9.7m above ground level. This aligns well with the juncture of the level 2 floor level. It is recommended that reference to 10m is amended to reflect the indicative design (i.e. the awning having a minimum height of approx. 9m or to align with the level 2 slab level).</p>	<p>In their submission, the landowner states that while this remains their intention, the indicative design indicates that the roof/awning is able to align with the juncture between the first and second floors at a height of 9.2 metres above ground level. As such, the provision and relevant figure in the draft DCP has been updated to reflect the above.</p>
		<p>Queens Court – activation – Mirvac fully supports the intent to activate the through-site link through a range of fine grain uses. Given site constraints however there are significant challenges in being able to accommodate such uses within the basement. Mirvac's focus will therefore be on investigating opportunities for double height spaces at ground and first floors. Acknowledging this, there may be some benefit in providing flexibility to utilise basement or level 1 in Section 6.1.5.2 (18)(b).</p>	<p>The provisions in the draft DCP seek to maximise the amount of retail activation that fronts the Queens Court through-site link by encouraging double height retail spaces that may link from the ground floor to the basement or first floor.</p> <p>It is however unlikely that retail space may be accommodated in the basement of the future building due to site constraints and the potential for flood water inundation. As such, this provision has been reworded to provide flexibility in the provision of fine grain retail fronting the through-site link.</p>
		<p>Queens Court – activation – The DCP requirement for connected ground and basement / first floor retail spaces may also limit the ability to qualify for Lane Development floor space e.g. having space less than 100sqm. It is requested the Council review the wording accordingly.</p>	

Attachment A
Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
		<p>Design excellence – It is recommended that Council review Section 6.1.6.4 to ensure the correct LEP reference is made i.e. reference to Clause 6.25(3A)(d) rather than 6.21(7)(b)?</p> <p>Reference 6.21 (7)(a) not applying may not be necessary given proposed amended LEP Clause 6.25 covers this off.</p>	<p>The intent of the draft amendments to the LEP as contained in the planning proposal is to ensure the operation of the existing provisions, located elsewhere in the LEP, are applied as per their current operation. As such, the draft provisions for the subject site directs and references the relevant clauses where necessary.</p> <p>The draft provisions and the DCP have been updated to reference the relevant design excellence and APDG clauses where necessary to provide additional clarification. The draft provisions in the planning proposal directs to applicable clause for the application of additional floor space should the building exhibit design excellence.</p>
		<p>Draft voluntary planning agreement – Annexure C in the draft VPA which contains Drawing SSK 006 – Instruments Plan. It is confirmed that it is the intent that the owner of the Mirvac owned land will have the burden of maintaining:</p> <ul style="list-style-type: none"> the land over which the Lane Works and Blast Wall will be located including the public access through site link; and the Telstra colonnade including public access. Whilst this is marked as items (2), (4), (6), and (8) on the “SSK 006 – Instruments plan” in Annexure C to the Draft VPA, those numbers depict the general area where the maintenance obligation will apply. However, the burden of that maintenance covenant is intended to fall on the Mirvac Land. That is, the positive covenant instrument will be registered on the Mirvac Land as per the amended plan included at Attachment A but the maintenance is to occur on the area subject to the through site link, Lane Works, Blast Wall and Telstra colonnade. This has been made clear within the amended plan and the note to item [2] and [4] and [8]. <p>Further, we note that the Blast Wall (if constructed) will extend beyond Queen’s Court. In which case Mirvac will enter into an arrangement with the owner of Lot B DP 104160 (Ausgrid) to also ensure that that portion of the Blast Wall is maintained by the owner of the Mirvac Land.</p> <p>In summary, it is requested that SSK 006 – Instruments Plan Revision 6 is replaced with the attached updated plan (SSK 006 – Instruments Plan Revision 8) in order to more accurately convey the maintenance arrangements and obligations committed to by Mirvac.</p>	<p>Noted. No objection to these minor changes is raised by the City as they will not change the public benefits and the VPA will be amended prior to execution.</p>
8.	Adjacent landowner	<p>Tower massing impact on Underwood Street – The tower element of the proposed building envelope is setback 3 and 4 metres from Underwood Street. This can be compared with the former APDG controls for a tower on the 55 Pitt Street site which had a setback of 8 metres.</p> <p>The proposed tower separation results in reduced amenity for Underwood Street in terms of sun and daylight access to public places. Sky views are significantly reduced, resulting in an erosion of the benefits from the wider Underwood Street footpath. This reduction in daylight can be seen in the following diagrams.</p> <p>It is submitted that consideration should be given to the tower setback from Underwood Street and retaining the previous APDG tower setback of 8 metres.</p>	<p>Setbacks help manage impacts to amenity and environmental conditions, including wind, daylight access and privacy. The draft Strategy generally recommends an 8 metre setback and allows setbacks to be varied where the proposal can demonstrate equivalent daylight access is maintained compared to the performance of a base case envelope.</p> <p>The planning proposal was accompanied by a daylight analysis in the Urban Design Study that compared the impact of the planning envelope on daylight levels in the public domain as compared to the base case envelope. The analysis demonstrated that overall, the proposal is capable of maintaining equivalent levels of daylight access to surrounding public domain and is considered acceptable. Furthermore, the east-west section of Underwood Street will include a publicly accessible colonnade, replicating the current pedestrian conditions. Increasing the tower setbacks on the northern boundary will not result in a significant increase to pedestrian daylight levels along the colonnade. It is noted that both towers include limited setbacks as a result of limited site area and tower floor space requirements. The adjacent tower includes a nil setback along its southern</p>
	Adjacent landowner	<p>Tower setback and privacy – The proximity of the two towers results in adjoining office areas in close proximity. The impact is ameliorated by the majority of each adjoining building elevation being taken up by the building cores, however the privacy to office areas in the south eastern corner of the Sydney Place floorplate is compromised as a result. Measures can be readily incorporated into the detailed design of 55 Pitt</p>	

Attachment A

Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
		<p>Street to enhance the amenity and function of the north east corner of the office floors in any new building. This can be achieved as an outcome of the competitive design process.</p> <p>Council is requested to ensure that there is a requirement in the future design competition to consider features in the north east corner to maintain privacy between the buildings. This should be a requirement of the design competition brief.</p>	<p>boundary, however as this is predominantly building core privacy concerns are limited to the north-east corner of the subject site. The Building Design provisions in the DCP has been updated to ensure sufficient treatments are included to minimise any privacy impacts to adjacent towers</p>
	Adjacent landowner	<p>Function of Underwood Street – Council is requested to amend Figure 6.8A – Streets, Lanes and Through Site Links – Option B of the Draft Sydney DCP 2012 for 55 Pitt Street to correct the legend to Lane Type C which is the east west section of Underwood Street. The notation for “F” should be altered as follows:</p> <p>Shared service road 5m. No vehicle access 8am–6pm Monday to Friday.</p> <p>Underwood Street carries two-way vehicle movement to the vehicular entrance to Sydney Place and 24 hour access to this vehicular entrance is required.</p>	<p>Regulation of the use of the roadway takes place under the Roads Act 1993 and is not governed by the planning controls. The planning controls set out the available space of the roadway suitable for its intended future use. The draft DCP includes a provision to ensure development on site will not impact the future conversion of adjacent roadways to shared zones. The draft DCP has been updated to remove reference 'No vehicle access 8am-6pm Monday to Friday' from the legend in Figure 6.8A as it relates to Lane type C for the east-west section of Underwood Street.</p>
	Adjacent landowner	<p>Amendments to drafting instructions – Table 1 of Council’s Planning Proposal – 55 Pitt Street, Sydney provides drafting instructions for proposed amendments to the APDG provisions in Sydney LEP 2012. The following clarifications to these drafting instructions are requested:</p> <p>6.25(3A) - Correct the first sentence to remove redundant words.</p> <p>6.25(3A)(d) - Add clause reference number at the end of this paragraph – perhaps clause 6.21.</p> <p>6.25(8)(b) - Correct this paragraph to refer to subclause (8) rather than clause (6.25) and or insert reference to block 5. Current wording can mean the clause applies to all of the APDG site with the planning proposal specific to 55 Pitt Street (block 5).</p> <p>6.25(8)(c) - For the same reason, this subclause should only apply to block 5 and not the subject land to which clause 6.25 applies.</p>	<p>The City’s response to the requested amendment is included below:</p> <p>Clause 6.25 (3A) - the planning proposal has been updated to delete (shown as strikethrough) the duplicate words;</p> <p>Clause 6.25 (3A)(d) – noted, the draft provisions in the planning proposal have been updated (shown in italics) to reference the specific clause as follows "building demonstrating design excellence as defined under clause 6.21(9)";</p> <p>Clause 6.25 (8)(b) - clause 6.25 (8) defines block 5 and includes lot descriptions, the ensure the draft provisions are clear, the planning proposal has been updated to include "sub" clause in 6.25 (8)(b); and</p> <p>Clause 6.25 (8)(c) - to ensure the land to which these provisions apply, the planning proposal has been updated to include "sub" clause in 6.25 (8)(c).</p>
9.	Individual	<p>Support additional height/density – I think it is fantastic! Sydney needs more of this quality high rise development. It is a Global City and needs to retain its competitiveness. Taller, greener, more efficient towers with more public space opened up between them instead of rubbish 70's concrete buildings would improve the CBD immensely.</p>	<p>Noted. The proposal to increase building height and floor space is consistent with the aims of the Central Sydney Planning Strategy which allows development potential for the site and opportunities for economic growth in Central Sydney on suitable sites.</p>
10.	Individual	<p>Support additional height/density – I think this is a positive development. For too long I believe the CBD has been too "short" which has resulted in the inefficient use of space in the CBD. If anything, my main criticism is the height limits should be increased.</p>	
11..	Individual	<p>Support additional height/density – I believe the proposal of a 232m office tower at 55 Pitt street should get the green light and be built, as it will help Sydney and its economy, and provide more future opportunities for jobs.</p>	
12.	Individual	<p>Support additional height/density – As a City of Sydney resident and property owner, I’m supportive of this endeavour. Include Seismic-design; and Allow "sun light through".</p>	
13.	Individual	<p>Support additional height/density – I totally agree as the increase of population is a fact and the height of 232 still is very reasonable</p>	
14.	Individual	<p>Support additional height/density - I support the proposal to increase the floor space ratio and height to permit the development of a commercial office tower of up to 232 metres high at 55 Pitt Street, Sydney.</p>	

Attachment A

Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
		Economic benefits – I believe this is a state-significant site and the new proposal will positively impact the skyline and will provide necessary local improvements to the streetscape and accessibility in the area.	Noted. Capacity for employment growth in Central Sydney is important to ensure the New South Wales economy is capable of delivering the necessary resilience and future growth for recovery. This planning proposal provides for additional employment floor space to increase the capacity of new jobs and investment.
15.	Individual	Excessive height/density – There is no valid reason and nothing unique being provided to allow the height of the building to be increased above 110m. The same rules should apply to this development. COVID has shown that office space is likely to be less utilised into the future,	The subject planning envelope, at 232 metres in height and as a commercial office tower, will be consistent with its surrounding context. The site is located in a tower cluster area, identified in the Strategy and draft Central Sydney planning proposal. Tower clusters have been designated as locations where additional building height and density may be accommodated without overshadowing key public spaces and deliver additional employment generating floor space. Such projects are required to deliver key sustainability targets and ensure the protection of acceptable public domain amenity. The height of the tower is also consistent with the heights envisaged under the Strategy for this location.
16.	Individual	Excessive height/density – No. Keep it as it is. 232m is too tall.	
17.	Individual	Excessive height/density - The planning controls should not be “unlocked” for this development. The local amenity improvements should be provided with the development meeting existing planning controls.	
18.	Individual	Excessive height/density – I am against this height for the city. There is shadow impact, and its over development of the area	
19.	Individual	Excessive height/density – Increasing the tower size to 232 meters will add no benefit to the future of Sydney. It is also extremely close to existing buildings. Future generations of employees will forever be looking across at another building. Adjacent buildings will also be heavily restricted of natural light, privacy, and views will be blocked. I heavily oppose these height increase changes. The past agreed LEP for put in place for reasons listed above.	The planning proposal introduces an alternative building height of 232 metres for the subject site, by amending the APDG provisions in the LEP. By delivering significant public domain improvements, new pedestrian laneways and other links throughout the site, the proposal delivers on the objective for clause 6.25 of the LEP and as such meets the requirements for additional building height at this location.
20.	Individual	Excessive height/density – I’m in the middle of Sydney [York street] 12 years ago because I wanted all the benefits the city of Sydney said they were interested in. Since then all they have done is obliterated the environment Sun is only a bonus when I take the Manly ferry or the botanical gardens.	The proposed indicative development concept includes a maximum building height of 232 metres on no more than 44% of the block, to accommodate up to 50 storeys of new office floor space. New active uses and ground floor retail will be included in the podium, which will front an upgraded public domain, comprising of a new north-south through-site link achieved by extending Queens Court north to form a new connection with Underwood Street, which will feature an east-west pedestrian colonnade. These new pedestrian connections will connect to the wider pedestrian laneway network that is currently being delivered across the APDG block, providing more accessible open space and activated pedestrian laneways that will be suitable for outdoor dining.
		Adverse amenity impacts – Cycleways and roads don’t enhance they are just tunnels for winds. Perth was known as the widest city in the world in the 70S. City of Sydney, congratulations your high towers not only mean lights on during the day but blown above the speed limit when going out, I suppose wind power is a green effect will be your argument. It is obvious that the shape and positioning create wind and shadow. Get out of your offices and take a walk on a nice day. Of course, you will need a jumper and heavy shoes to protect from wind and shadows.	The planning proposal delivers on the objective of the APDG block by providing for additional building height in a high-quality built form that delivers an improved public domain which consists of new pedestrian connections. Future development is located on the site where a tower has been envisaged since the controls were initially developed.
21.	Individual	Adverse amenity impacts – Too high. The human scale is being lost all over the city. Too high causes more overshadowing and greater wind sheer and wind tunnel effect.	The proposal is also consistent with a key move of the Central Sydney Planning Strategy in that additional building height and density may be unlocked where it will not result in adverse wind and daylight impacts in the public domain. The proposed indicative scheme has been developed in collaboration with the landowner to minimise any adverse environmental impacts, including excessive wind speeds. To ascertain the impacts of the proposal on the surrounding environmental amenity, the Strategy establishes a base case building envelope, to which the planning envelope is to demonstrate improved or equivalent performance.
22.	Individual	Adverse amenity impacts – The street frontage setbacks are inadequate and do not provide sufficient open space sky views to pedestrians in the public space.	The planning proposal was accompanied by a daylight analysis included in the Urban Design Study that found that the proposed planning envelope will maintain equivalent daylight levels in the public domain surrounding the site as the base case envelope under the Strategy. The planning envelope is outlined in this planning proposal and is therefore consistent with the requirements for daylight

Attachment A
Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
			<p>levels under the Strategy.</p> <p>A detailed Wind Impact Assessment accompanied the planning proposal, which included an assessment of pedestrian wind comfort levels. The assessment included a wind tunnel equivalence test to determine the impacts of the proposed envelope on wind conditions. The assessment found that public domain conditions would generally remain suitable for pedestrian walking activities, however there were some areas that required mitigation to ensure the wind conditions matched the character of that location. For example, while conditions would remain calm in Dalley Street and Underwood Street, a high-level glazed roof/awning above the enhanced Queens Court through-site link would provide for a comfortable environment that is suitable for dwelling and outdoor dining, which would complement the fine-grain retail spaces that are proposed to front the laneway. As such, the draft DCP includes provisions for a high-level glazed roof/awning above the Queens Court through-site link.</p> <p>The planning proposal was accompanied by an Urban Design Study that included a detail shadow analysis that demonstrated the proposed planning envelope will not result in any additional overshadowing to nearby identified places, including Macquarie Place Park and Australia Square.</p>
	Individual	<p>Ecological Sustainable development – I do not support the proposed changes as the consideration of ecologically sustainable development is too simplistic and uninformed. It is essential that a development of this magnitude is completed with a central focus on ESD. The NABERS and green star systems have serious flaws that this proposal.</p>	<p>The proposed development concept is required to achieve the set ecological sustainable development targets, which have been agreed to and secured through a planning agreement. The target ESD ratings are consistent with the City's sustainability targets and include a 5.5 star NABERS energy rating, 4 star NABERS water rating and 6 star Green Star office rating. The NABERS and Green Star initiatives are considered industry standards and widely used on new and existing developments across New South Wales, Australia and internationally as they are well-suited for inclusion in planning controls than other measures due to their certainty for landowners.</p> <p>Notwithstanding the criticisms of the NABERS and Green Star rating systems, the draft DCP includes measures to ensure future development on site will deliver significantly improved environmental performance and sustainability outcomes. The proposal includes further ESD initiatives that go beyond the above programs. The Ecologically Sustainable Design Statement that accompanied the planning proposal details the specific sustainability initiatives that are to be implemented throughout the whole lifecycle of the building. Initiatives secured in the VPA as part of Green Star system include construction environment management, building metering and monitoring systems and operation waste management to divert from landfill in the operation phase. The ESD provisions in the DCP ensure that future development on site will net-zero carbon, zero waste and water efficient outcomes.</p>

Attachment A
Summary of submissions: 55 Pitt Street

No.	Submitter	Submission	Response
23.	Individual	<p>Heritage – The building that I believe should be listed is at 51-57 Pitt St. It is a medium rise building in the Post War International style and is a perfect complement to (and every bit the equal of), the Former Qantas House on Chifley Square and the AMP Building. It is also one of the few (and potentially destined, in time, to be potentially the only) remaining example of the medium-rise office buildings that once dominated the area between Circular Quay and Bridge St.</p> <p>I also note that according to the Council on Tall Building and Urban Habitat, a single developer owns the building in question and the adjoining property to the north, with a vision to rebuild both. If 51-57 Pitt St received heritage classification, the developer could potentially utilise the heritage floor space scheme to avoid losing-out overall.</p> <p>I do not work in any area to do with urban planning or design, I am simply a proud citizen of this city who believes passionately in the need to preserve our significant architectural heritage.</p>	<p>In 2017-2018, the City conducted a review of modernist buildings within the local government area, to ensure that the best examples of this architectural period were identified, assessed and heritage listed to ensure their conservation. This review included an assessment of many buildings of this architectural style and 49A-57 Pitt Street was not identified for heritage listing in the recent proposal.</p> <p>Demolition of all buildings on the land has been anticipated in the vision for the APDG block in the LEP and DCP to facilitate the redevelopment of the whole block and deliver significant improvements to the public domain and pedestrian network. Furthermore, the planning proposal was accompanied by a Heritage Impact Statement which did not consider any of the existing buildings on site to be of sufficient significance to justify its retention or listing.</p>
24.	Individual	<p>Design excellence - The Design Excellence Strategy should include criteria of Diversity & Inclusion for the Invited Competitors and the Jury - including a gender target of 40/40/20. A diverse community requires a diversity of built form practitioners to create our urban environs.</p>	<p>The Design Excellence Strategy will be finalised following the completion of the public exhibition of the planning proposal. The current policy does not require the jury details to form part of the strategy. Nevertheless, the proponent has put forward a jury with equal gender representation. The draft update to the Design Excellence provisions for tower cluster areas includes requirements for equal gender representation and will be implemented following adoption by Council.</p>

Attachment B

**Planning Proposal
55 Pitt Street, Sydney
Amended November 2020**



Planning Proposal - 55 Pitt Street, Sydney

Amendments to the Sydney Local Environmental Plan 2012

November 2020–April 2020

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This planning proposal has been amended, new text shown in ***bold italics*** and deleted text shown as ~~**bold strikethrough**~~. Amendments dated November 2020 are shown in *italics* and deleted text shown as ~~strikethrough~~.

Executive summary

The City of Sydney (the City) has prepared this Planning Proposal for 55 Pitt Street, which includes 37-49 Pitt Street, 49A-57 Pitt Street, 6-8 Underwood Street, 6 Dalley Street and 8-14 Dalley Street Sydney (the site), in response to a request from the owner, Mirvac, for the City to prepare a planning proposal for the site.

This Planning Proposal explains the intent and justification for the proposed amendments to the Sydney Local Environmental Plan 2012 (LEP) as it applies to the site. This Planning Proposal has been prepared by the City in accordance with Section 3.33 of the Environmental Planning and Assessment Act 1979 and the Department of Planning, Industry and Environment's 'A guide to preparing planning proposals' and 'A guide to preparing local environmental plans'.

The site is approximately 4,295 square metres in area and is bound by Pitt Street, Underwood Street and Dalley Street. A short laneway, Queens Court intersections the southern side of the site for a length of 25 metres. Existing development on site includes a number of medium sized contemporary commercial buildings with ground floor retail spaces and adjacent utility buildings. Surrounding development is predominantly commercial in nature, with a large hotel on the opposite side of Pitt Street.

The site is also located within the city block bound by Alfred, Pitt, Dalley and George Street, known as the APDG Block. The block is currently in transition with a number of large redevelopment projects under construction to the north of the subject site as a result of alternative controls included in the LEP.

Under the existing LEP controls, the site is zoned B8 Metropolitan Centre, has a maximum building height of 110 metres and maximum floor space ratio of 8:1, with additional floor space available for commercial floor space and developments that exhibit design excellence. The site's B8 Metropolitan Centre zoning permits office, retail, commercial and residential uses. The site is also subject to the APDG alternative controls in the LEP, which provide for a tower to 200 metres in height across the whole subject site.

The City has prepared this planning proposal following a detailed review of the proponent's planning proposal request and accompanying documentation. Clarification has been sought from the landowner and minor changes have been made to consultant reports to address issues relating to urban design, including clarification on overshadowing and wind conditions.

This planning proposal is to amend the APDG clause of the LEP to:

- allow for another development scenario by including development block 5 (55 Pitt Street) as an alternative option to the existing development block 1;
- set a maximum building height of 232 metres to up to 44% of block 5;
- set a maximum floor space ratio of 15.02:1, up to 16.52:1 including design excellence;
- permit for the purpose of calculating floor space ratio for block 5, the inclusion of the adjoining Telstra and Ausgrid utility buildings;
- restrict development within block 5 to non-residential uses only; and
- allow development consent to only be granted if a through-site link is provided.

This planning proposal provides for an increase to the maximum building height and floor space ratio which will allow for the future redevelopment of the site delivering the following key benefits:

Planning Proposal - 55 Pitt Street, Sydney

- Retention of employment uses – the future commercial office tower will retain and expand employment floor space on the site and will increase Central Sydney's capacity for employment growth.
- Improved built form – the proposal will facilitate the delivery of a new 70,000 square metre commercial office tower. The proposed controls will provide for a high quality building that responds to surrounding development and ensures the continued operation of adjoining critical infrastructure utility buildings servicing the northern CBD.
- Public domain improvements – a new high quality upgrade to Queens Court as a through-site link and pedestrian colonnade connecting to the wider network of pedestrian laneways across the ADPG precinct will be secured as part of this planning proposal.
- Pedestrian amenity – the planning proposal sets controls for a building envelope that does not detrimentally impact pedestrian amenity in the public domain and delivers acceptable daylight and wind conditions.
- Ecologically sustainable development – the draft DCP and planning agreement associated with the planning proposal include ambitious ecologically sustainable development benchmarks to ensure an energy efficient built form is delivered.

The City has prepared a draft site-specific amendment to Sydney Development Control Plan 2012 (the draft DCP) to help ensure the objectives and intended outcomes of this planning proposal are achieved. The draft DCP includes controls relating to the built form of the proposed development, public domain, active frontages, public art, design excellence and sustainability. The City intends to publicly exhibit the draft DCP with this planning proposal.

1. Site identification

1.1 Site identification

This planning proposal relates to five separate lots with different owners and road parcel Queens Court. These sites are referred to in this report as 'site' or '55 Pitt Street'. The lots are as follows:

Mirvac

- Lot 1 DP 513109, known as 49A-57 Pitt Street
- Lots 2-3 DP 1092, Lots 1-2 DP 1112308, Lot 6 DP 75338, Lot 7 DP 110046, Lot 4 DP 524306, known as 37-49 Pitt Street
- Lot 501 DP 714847, known as 6-8 Underwood Street

Telstra

- Lot 1 DP 787946, known as 6 Dalley Street

Ausgrid

- Lots A and B DP 104160, known as 8-14 Dalley Street

City of Sydney

- Queens Court

The lots are shown at Figure 1.

Figure 1: Land affected by this Planning Proposal



1.2 Site location

55 Pitt Street is located in Central Sydney in the City of Sydney local government area. The site is part of the street block bound by Alfred, Pitt, Dalley and George Streets, known as the APDG block in the Sydney Local Environmental Plan 2012 (LEP) and Sydney Development Control Plan 2012 (DCP).

The site has frontage to Underwood Street to the north and west, Pitt Street to the east, Dalley Street and Queens Court to the south. Circular Quay, which includes a train station and light rail and ferry connections, is located about 160m north of the site. The Grosvenor Street light rail stop is located on George Street, about 115m to the south-west of the site. Wynyard train station, light rail stop and Wynyard Park is located about 300m south-west of the site. 55 Pitt Street is located close to the intersection of Pitt Street and Bridge Street, connecting the site with Macquarie Place Park, 75m to the east.

A site location plan and aerial photo of the surrounding area are shown at Figures 2 and 3.

Figure 2: Site location

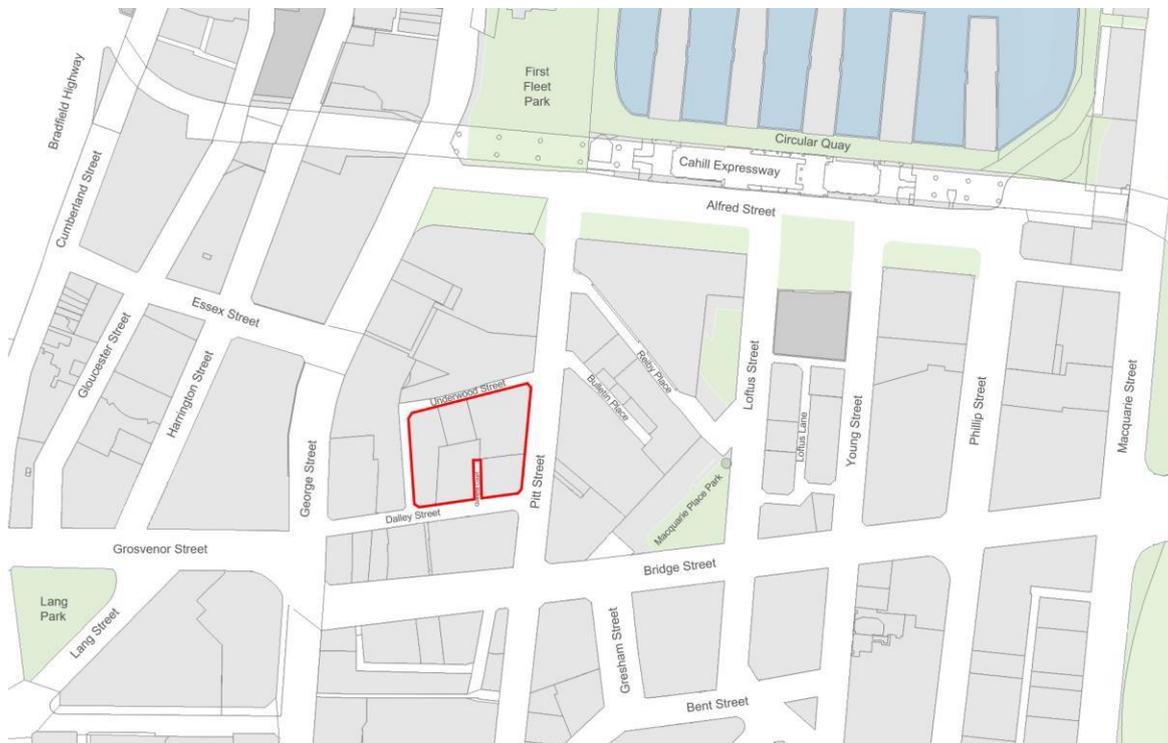
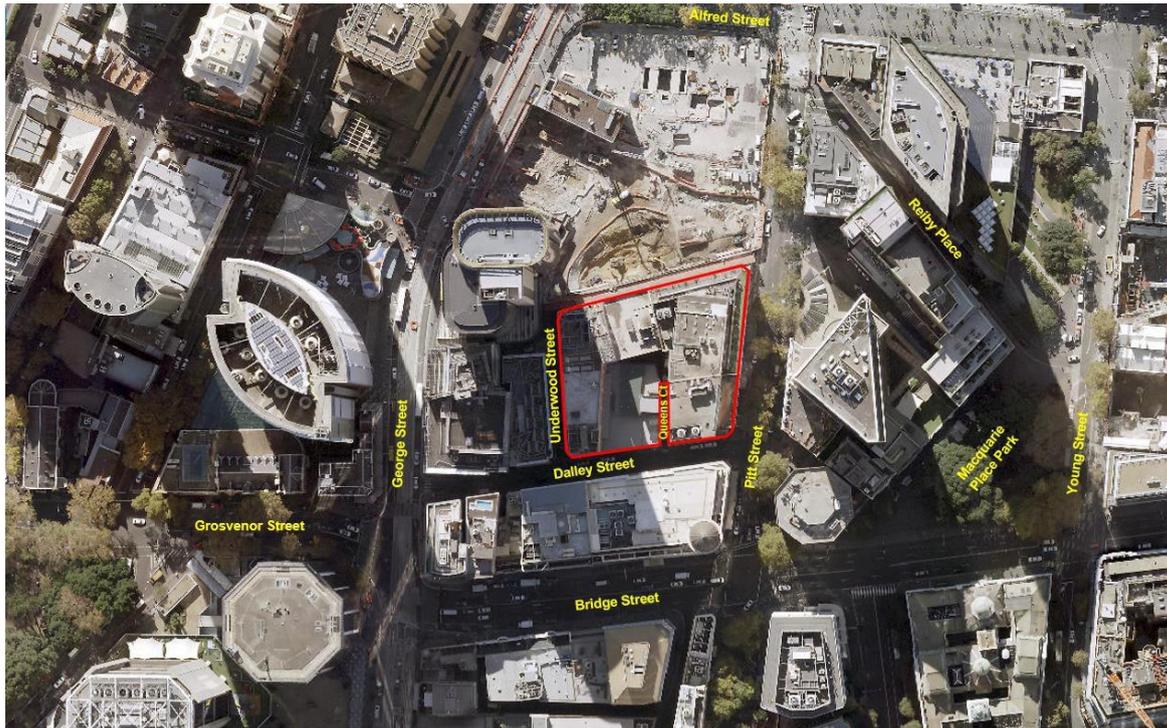


Figure 3: Aerial photo of the site



1.3 Site characteristics and context

The site is irregular in shape and has a total area of 4,295m², including the Ausgrid and Telstra lots. Its eastern boundary fronts Pitt Street and is about 62m long. The site's northern and western boundary fronts Underwood Street and is 74m and 57m long, respectively. The site's southern boundary to Dalley Street is 47m long and is interrupted by Queens Court, a short laneway that is 24m long.

Existing development consists of a nine storey mid-century commercial office building, which is located at the intersection of Pitt Street and Dalley Street. A ten storey contemporary commercial office building is adjacent, at the intersection of Pitt Street and Underwood Street. Adjoining this is a small ten storey masonry office building, facing north towards Underwood Street. A pedestrian colonnade extends the length of the northern section of Underwood Street.

A nine storey masonry telephone exchange building featuring a pedestrian colonnade fronts the western section of Underwood Street and the intersection with Dalley Street. This building is connected across Underwood Street to another telephone exchange building by a series of overhead bridges that feature public art. A seven storey substation fronts the middle-section of Dalley Street, adjacent to the intersection with Queens Court.

Surrounding development is predominantly commercial in nature.

- East – On the eastern side of Pitt Street adjacent to the intersection with Alfred Street is the Gateway commercial and retail development. Directly to the east of the site on the opposite side of Pitt Street is the Marriott Hotel, including retail uses in the heritage warehouse buildings. Adjoining is a 16 storey commercial building located at the intersection of Pitt Street and Bridge Street, adjacent to Macquarie Place Park.
- North – The northern side of Underwood Street currently features construction sites for several large projects, including a mixed-use hotel, residential and retail development that will front Alfred Street, and a new commercial office tower to a

maximum height of RL 265m on Pitt Street, ground floor retail fronting the future pedestrian laneway network and a new public square fronting George Street.

- West – A commercial office tower at 200 George Street is located on the western side of Underwood Street, including ground floor retail fronting the future pedestrian laneway network, a through-site link and an associated utility/infrastructure building that is connected to the telephone exchange building on the subject site through a series of overhead bridges above Underwood Street. A new commercial office tower to a maximum height of RL 115m is currently under construction at 210 George Street.
- South – The Australian Stock Exchange (ASX) building is located to the south of the subject site and is a mid-rise building of up to 13 storeys (RL 52m) with frontages to Dalley Street, Pitt Street and Bridge Street. Adjoining are other commercial buildings of a similar scale with primary frontages to Bridge Street.

There are no heritage items located within the subject site, nor is the site located in a heritage conservation area. However, the state listed Tank Stream runs under the adjacent Pitt Street alignment.

Figures 4 to 6 show existing development on the site. The surrounding area is shown in Figures 7 and 8.

Figure 4: Photo of the subject site looking towards the intersection of Pitt Street and Dalley Street



Figure 5: Looking south-west towards subject site at the intersection of Pitt Street and Underwood Street



Figure 6: Looking west along Underwood Street towards the pedestrian connection with George Street

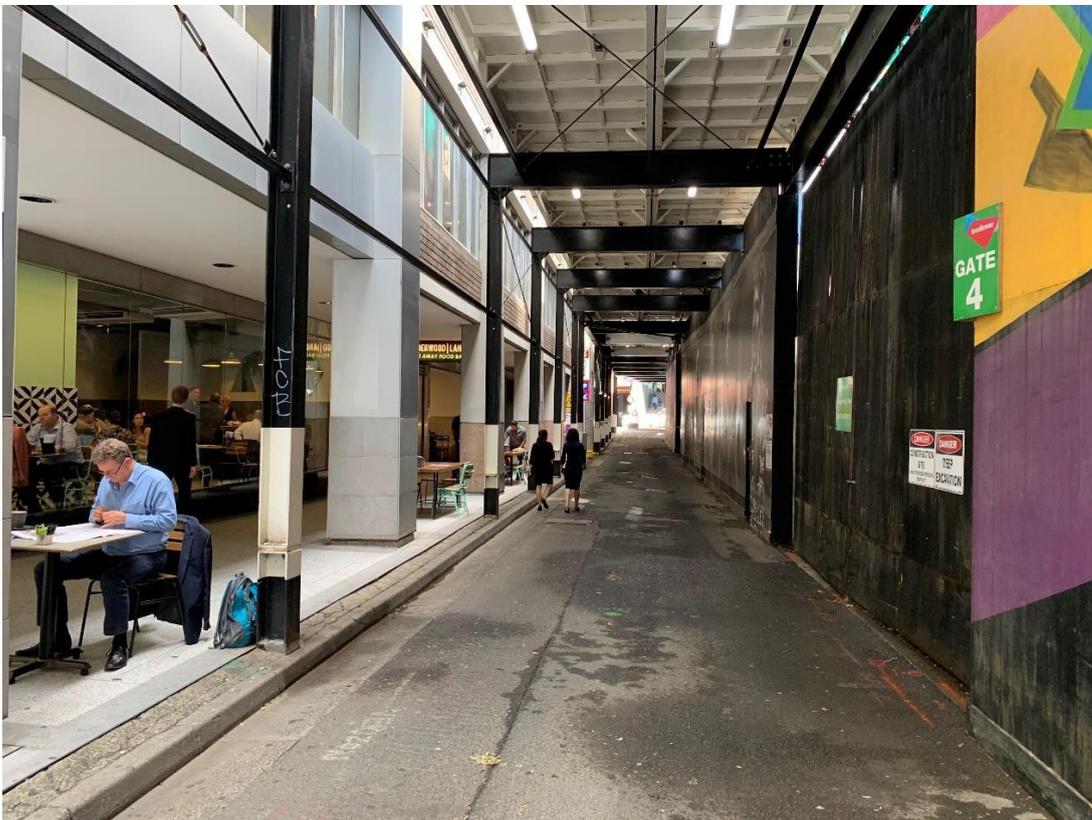


Figure 7: Looking south along Underwood Street towards the Telstra exchange building and colonnade



Figure 8: Looking south towards the subject site from Alfred Street



2. Existing planning controls

The LEP contains zoning and principal development standards for the site. These are discussed below.

2.1 Zoning

The site is zoned B8 Metropolitan Centre, as shown in Figure 9. The zone permits a broad range of uses, including commercial premises, community facilities, food and drink premises, as well as residential accommodation and tourist and visitor accommodation.

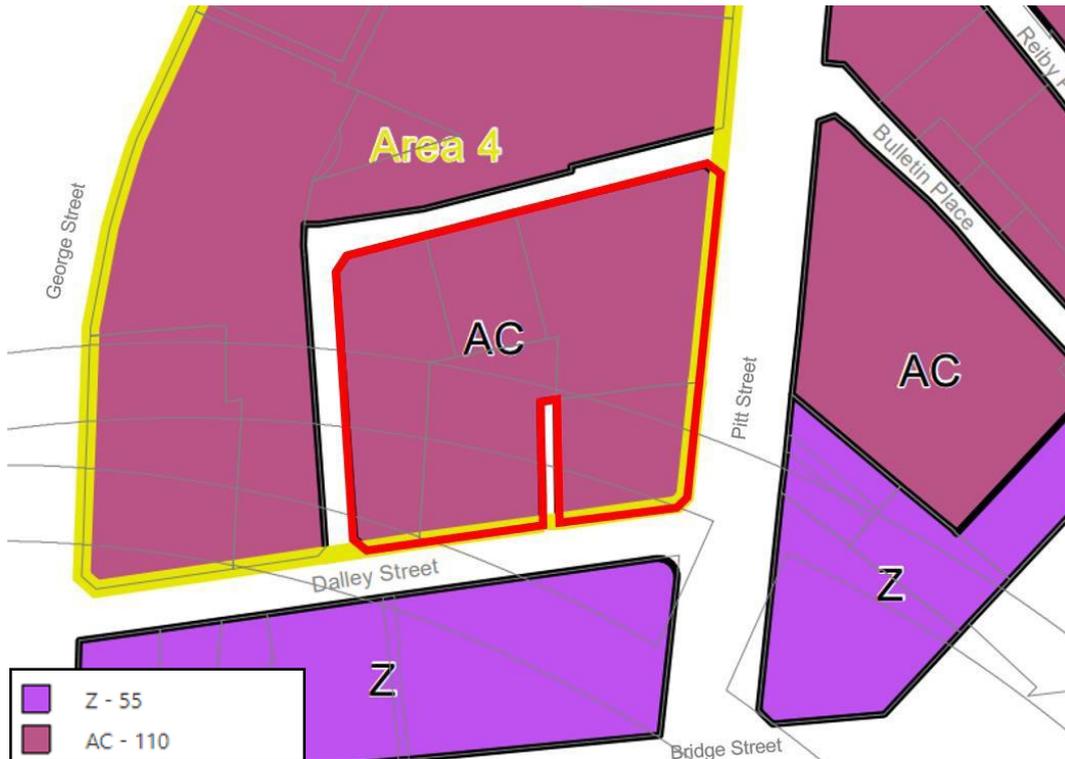
Figure 9: Extract from Sydney LEP 2012 Zoning Map



2.2 Building Height

The maximum permissible height for the site is 110m, as shown in Figure 10. The site is also be subject to the alternative controls for the APDG Block and sun access protection controls.

Figure 10: Extract from Sydney LEP 2012 Height of Building Map



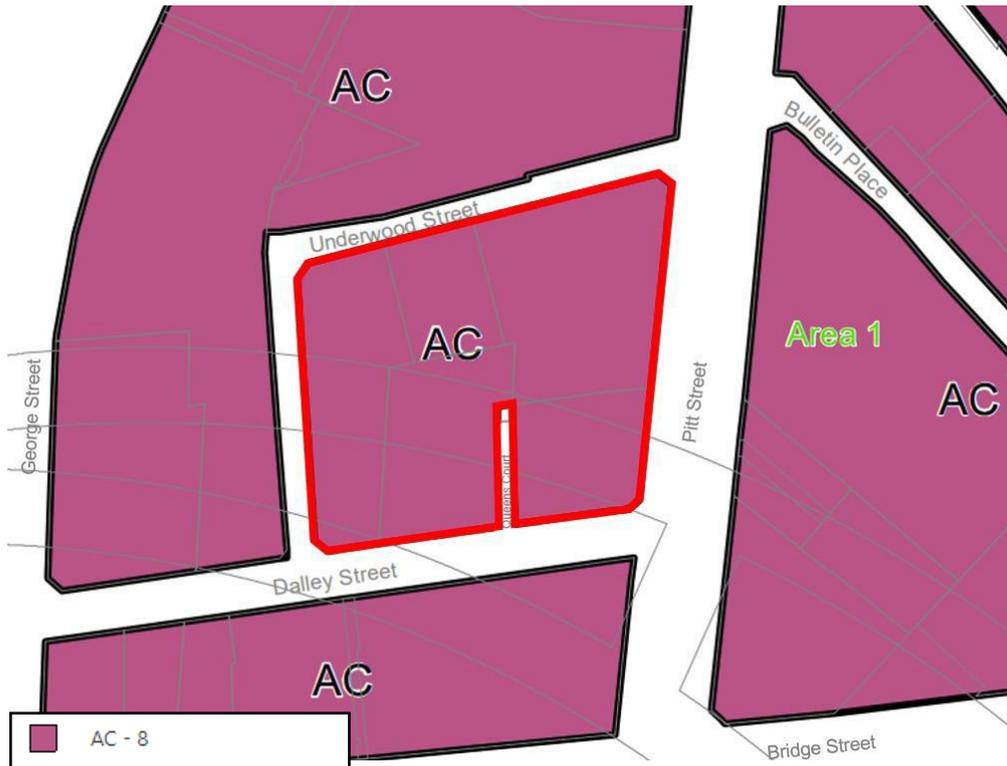
2.3 Floor Space Ratio

The maximum floor space ratio (FSR) for the site is 8:1, as shown in Figure 11. The accommodation floor space provisions under clause 6.4 of the LEP allows for additional FSR up to 4.5:1, subject to design excellence and purchase of heritage floor space. Up to 10% additional floor space may be granted under clause 6.21(7) of the LEP if a competitive design process has been undertaken and design excellence is demonstrated.

In total, an FSR of 13.75:1 is potentially achievable across the precinct for a commercial development.

The site is also located in the Circular Quay tower cluster area as identified in the Central Sydney Planning Proposal, and as such could, in the future, be eligible for a new design excellence bonus pathway for up to 50 per cent more floor space, subject to satisfying several criteria.

Figure 11 Extract from Sydney LEP 2012 Floor Space Ratio Map



2.4 Sun Access Protection

The site is affected by controls to protect the sun access to Lang Park, Australia Square and Macquarie Place, as shown in Figure 12.

Clause 6.19 of the Sydney LEP 2012 states there shall be no additional overshadowing of public spaces in Central Sydney including Lang Park, Australia Square and Macquarie Place during specified times.

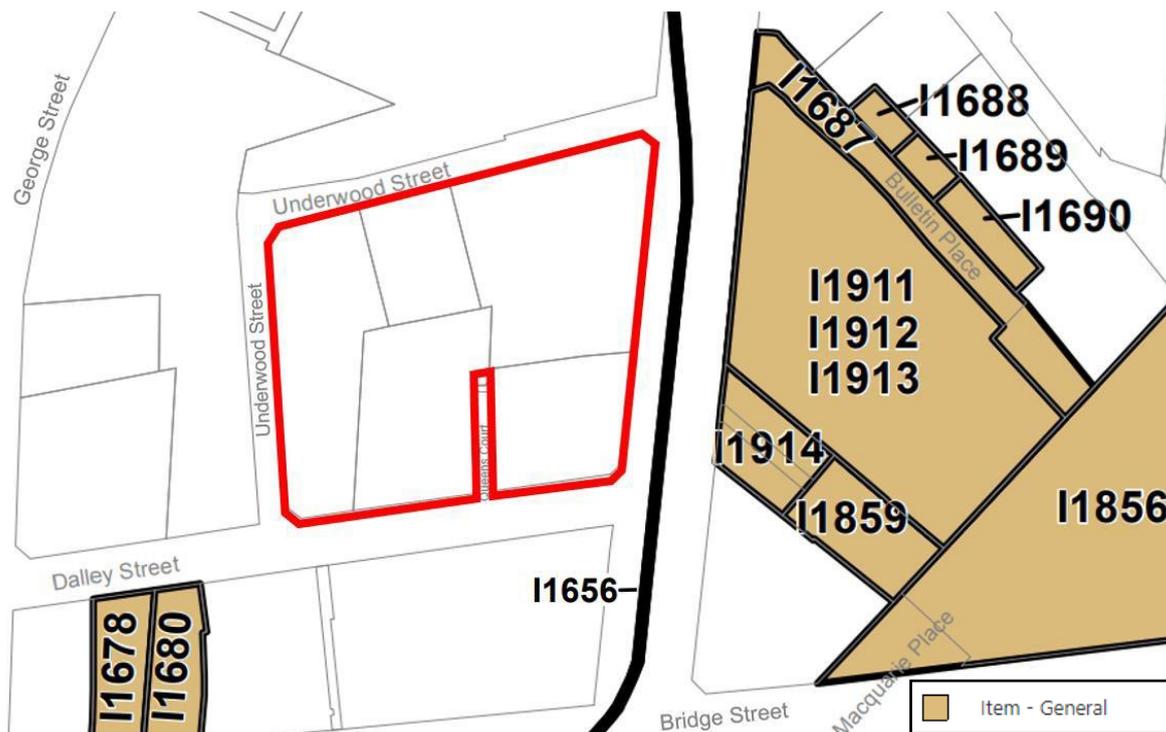
Figure 12: Extract from Sydney LEP 2012 Sun Access Protection Map



2.5 Heritage

The subject site does not contain heritage items, but is located in the vicinity of the Tank Stream, which runs under Pitt Street, as shown in Figure 13. The Tank Street is a heritage item listed on the State Heritage Register.

Figure 13: Extract from Sydney LEP 2012 Heritage Map

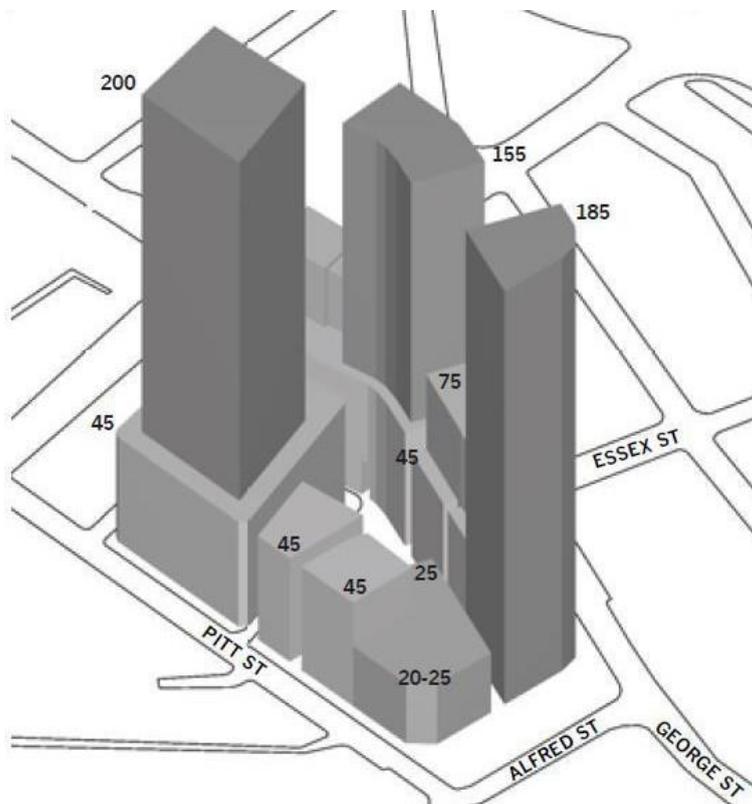


2.6 APDG controls

The APDG block is located south of the western edge of Circular Quay, bounded by George Street, Dalley Street, Pitt Street and Alfred Street. The precinct is currently undergoing a transition from mid-scale commercial buildings to a mixture of uses, with several large commercial, residential and hotel buildings under construction. The LEP features alternative controls for the block at clause 6.25. These controls allow additional height to facilitate public domain improvements and better built form outcomes.

The current APDG controls were borne out of a 2009 urban design study commissioned by the City of Sydney and undertaken by the NSW Government Architect Office. The study recommended selected locations for the new towers, a new public square and activated pedestrian laneway network across the APDG block. A single tower to maximum height of 200m was envisaged for the subject site, located in the centre of the block, covering Queens Court, shown in Figure 14. The alternative controls were included in LEP and DCP.

Figure 14: ADPG Tower Envelopes following NSW Government Architect Office Urban Design Study



Since 2009, the land ownership across the APDG Block has changed significantly, making it difficult to achieve the intended built form and public domain outcomes for 'block 1', as defined in the initial APDG controls, shown in Figure 15 in red. To realise the original vision of block 1, consolidation of a number of sites was required, and to date has not been achieved.

A planning proposal to amend the LEP was approved by the City in 2015 to facilitate the redevelopment of the adjacent site at 33 Pitt Street, to the north of the subject site. The amendments introduced a second option for the delivery of the APDG block. This planning proposal created a new development block, known as 'block 4' to the APDG controls, shown outlined in yellow in Figure 15. Development on block 4 included a new office tower to a height of 248m, relocated public plaza fronting George Street, new pedestrian laneways and refurbished Jacksons on George building.

Figure 15: Existing ADPG development blocks in clause 6.25 – Option A, left and Option B, right

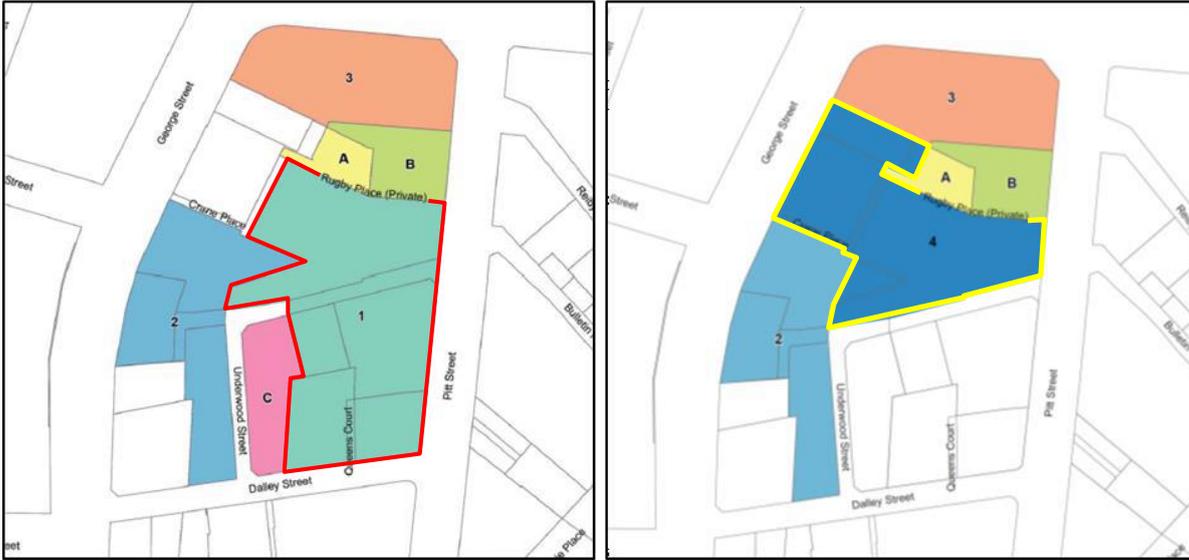
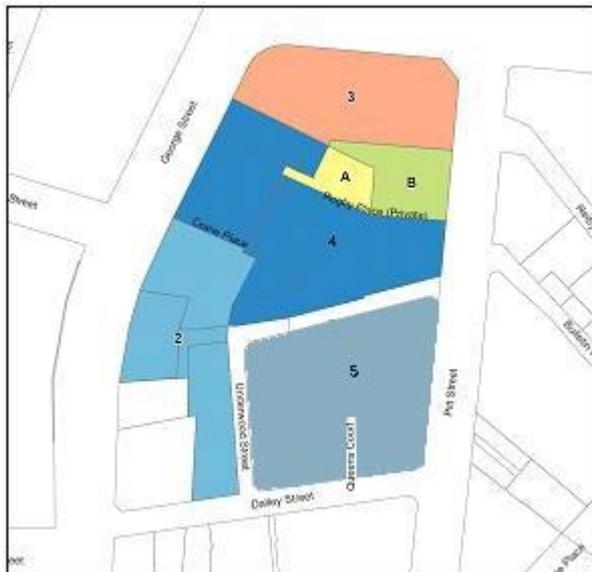


Figure 16: Proposed ADPG development blocks – new development block, ‘block 5’ for Option B



2.7 Previous planning proposals

Initial planning proposal

In February 2015, Mirvac submitted a request to prepare a planning proposal for site-specific amendments to the LEP controls for their sites at 6-8 Underwood Street, 37-49 Pitt Street and 49A-57 Pitt Street in Central Sydney to enable significant renewal as follows:

- new commercial office tower 141m in height including a 45m podium, with floor space to be harvested from the adjacent Telstra and Ausgrid utility buildings;
- new through-site link connecting Dalley Street and Underwood Street; and
- retail activation and facade treatments to the utility buildings on Underwood Street.

This planning proposal did not proceed due to a number of factors, in particular Mirvac and the City working together to reconsider the options and opportunities available for the site.

Second planning proposal

In June 2017, Mirvac submitted another planning proposal with a revised building height 15m higher than the initial request, including:

- new commercial office tower 155.5m in height with 45m podium, with floor space harvested from the adjoining Ausgrid site;
- enhanced pedestrian links connected to surrounding sites; and
- upgrade and treatment to the facade of the Ausgrid substation building.

This planning proposal was withdrawn in March 2019 due to issues and delays in obtaining formal owners consent from affected landowners.

Since the withdrawal of this planning proposal, the City has worked extensively with Mirvac and all landowners to explore potential built form outcomes consistent with the draft Central Sydney Planning Strategy.

2.8 Landowner request

In December 2019, Mirvac submitted a request to prepare a planning proposal for 55 Pitt Street, Sydney. The request included a Planning Justification Report, Urban Design Study, Design Excellence Strategy and Wind Impact Assessment. The City has prepared this planning proposal following consideration of the request.

Mirvac purchased the three lots that are the subject of this application (6-8 Underwood Street, 37-49 and 49A-57 Pitt Street) and has secured arrangements with Ausgrid and Telstra to transfer the floor space of adjoining sites (6 Dalley Street and 8-14 Dalley Street) and have therefore acquired development rights to the whole block, referred to in this planning proposal as 'block 5'.

The request seeks to amend the APDG alternative controls in the LEP to include site-specific controls for block 5. The request is to increase the maximum building height control to 232m from the current height of 110m and set a maximum floor space ratio of 16.52:1, including design excellence floor space for the purposes of a commercial and retail development.

The proposal will deliver approximately 70,000sqm of commercial office floor space in a new 50 storey tower with ground floor retail and active uses opening to new and upgraded public domain, pedestrian colonnade and through-site link. Vehicle access will be front Dalley Street to three levels of basement consisting of an off-street loading dock, end of trip facility and car parking.

The proposal seeks to transfer the unused floor space from the adjacent Telstra and Ausgrid sites, with improvements proposed to both utility buildings, in the form of façade and roof upgrades and new retail spaces in the Telstra building.

The City has prepared this planning proposal following detailed review and assessment of the proposed development concept. The City has worked with the proponent and their consultants to achieve acceptable wind conditions in the public domain adjacent to the subject site that is capable of being consistent with the objectives of the APDG controls, the draft Strategy and the draft Development Control Plan: Central Sydney.

An amendment to DCP, to be exhibited with this planning proposal, contains more detailed site-specific planning provisions.

The planning proposal and draft DCP address the issues arising from the assessment of the landowner's planning proposal request.

The planning proposal request has been considered and a planning proposal prepared noting the recent Council and Central Sydney Planning Committee decisions to exhibit the revised Central Sydney Planning Proposal. This site has been the subject of ongoing

discussions for some time and is ready to be progressed, without waiting for a change to the LEP prior to seeking a Concept Plan approval.

Figure 17: Photomontage of the future development concept



3. Objectives and intended outcomes

This planning proposal will enable the redevelopment of the commercial buildings on the 55 Pitt Street site to:

- provide an alternative development option in the LEP to deliver appropriate distribution of built form and floor space in context with the wider APDG block;
- identify 55 Pitt Street as a site where additional building height may be achieved if the development delivers certain public benefits, including street activation, public domain improvements, through-site link and upgrades to the retained buildings; and
- deliver additional employment generating floor space in Central Sydney.

The planning proposal is intended to recognise constraints to ‘unlock’ the development potential of the APDG block and achieve public domain improvements.

The draft DCP accompanying the planning proposal will facilitate the following:

- a commercial office tower with a maximum height of 232 metres including podium to provide definition to and activation of the public domain;
- delivery of public domain improvements in the form of a new pedestrian colonnade and north-south connection through the site linking to the network of laneways and through-site links;
- protection of public domain amenity by ensuring future development will not result in adverse wind and daylight impacts;
- significant upgrades to the adjacent Ausgrid and Telstra utility buildings to improve their aesthetics and deliver new retail activation opportunities; and
- ensure development meets 6 star Green Star rating, 5.5 star Base Building NABERS Energy rating and 4 star NABERS water score.

4. Explanation of provisions

4.1 Sydney Local Environmental Plan 2012

To achieve the intended outcomes this planning proposal seeks to amend the Sydney Local Environmental Plan 2012 as follows:

- amend clause 6.25 APDG block to:
 - allow for another development scenario by including development block 5 (55 Pitt Street) as an alternative option to development block 1;
 - allow a maximum building height of 232 metres to no more than 44% of the area of block 5;
 - restrict development within block 5 to non-residential uses only; and
 - provide additional floor space ratio of 2.52:1, taking the maximum to 15.02:1, to which design excellence can be applied;
 - permit for the purpose of calculating the gross floor area of block 5, the inclusion of the adjoining Telstra and Ausgrid sites;
 - ensure that only additional floor space can be awarded where development demonstrates design excellence.

The above amendments are only available for the new block 5 and are not available for development on block 1. It is noted however, that as development is currently under construction on block 4, the original APDG controls for block 1 are unable to be realised.

Reconfigured APDG development blocks

The planning proposal creates a new block, block 5, as shown in Figure 19. Existing Blocks 1 to 4, shown in Figure 18 will be retained. The controls encourage amalgamation for appropriate built form by requiring all lots within a block to be developed. The current ownership pattern across the wider APDG block and the development of adjacent sites in block 4 has meant that the development block 1 envisioned in the initial APDG controls will not be achieved. The new block 5 is needed to enable the development of 55 Pitt Street to proceed. Block 5 will be described by the relevant lot and DP numbers as follows:

Mirvac

- Lot 1 DP 513109 (49A-57 Pitt Street)
- Lots 2-3 DP 1092, Lots 1-2 DP 1112308, Lot 6 DP 75338, Lot 7 DP 110046, Lot 4 DP 524306, (37-49 Pitt Street)
- Lot 501 DP 714847 (6-8 Underwood Street)

Telstra

- Lot DP 787946 (6 Dalley Street)

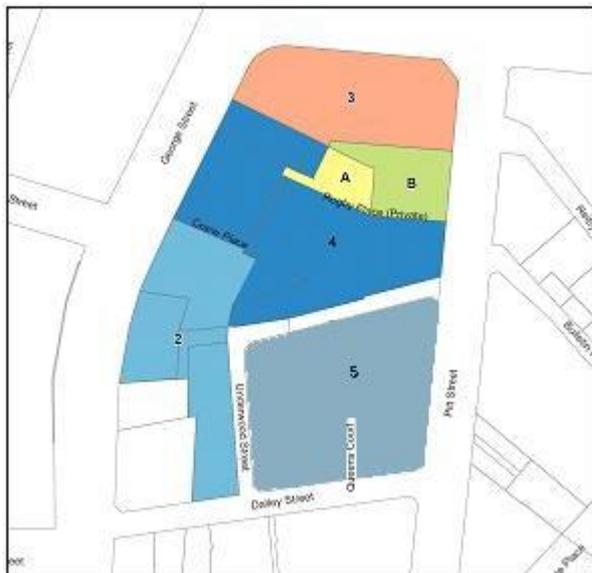
Ausgrid

- Lots A and B DP 104160 (8-14 Dalley Street)

Figure 18: Existing ADPG development blocks under clause 6.25 – Option A on the left is the original arrangement with the consolidated development of block 1 not possible as Option B on the right created block 4 which is currently under development



Figure 19: Proposed ADPG development blocks – new development block ‘block 5’ for Option B



Revised building height

The existing APDG controls permit a maximum building height of 200m for the subject site. The planning proposal establishes a maximum height of 232m over 44% of block 5, which includes the Telstra and Ausgrid sites.

Non-residential uses

To deliver future additional floor space for employment uses within the APDG block, only non-residential uses will be permitted on block 5 under clause 6.25 of the LEP.

A provision is proposed to ensure the alternative height and floor space controls may only be used on block 5 for commercial development and as such, residential or serviced apartment uses will be excluded. The existing zoning pursuant to clause 4.3 of the LEP 2012 is still applicable for the site with a mapped building height of 110 metres.

Floor space ratio

The site is eligible for floor space ratio of 12.5:1, comprising mapped FSR of 8:1 and accommodation floor space of 4.5:1. This planning proposal provides for additional site-specific floor space of 2.52:1, which will permit a maximum floor space ratio for the site of 15.02:1 and up to 16.52:1 should the building exhibit design excellence. Site-specific provisions ensure heritage floor space is applicable to any future development onsite in accordance with the existing provisions of clause 6.11 of the LEP. There is no change to the application of heritage floor space to accommodation floor space. Heritage floor space will not be applied to the site specific floor space of 2.52:1.

Gross floor area

For the purpose of calculating the gross floor area for future development on block 5, the calculation is to include both the Telstra and Ausgrid sites with the gross floor area transferred to the future tower on the adjoining Mirvac-owned development sites. The Telstra and Ausgrid sites are to be included in the site area despite clause 4.5(6) of the LEP. As the utility function is expected to remain there may not be significant works carried out as part of a future development application for the block and as such a new provision will be inserted advising that clause 4.5(6) is not applicable to the redevelopment of block 5.

A new provision will be inserted into clause 6.25(4) of the LEP, advising that consent can only be granted to future development on block 5 if improvement works are delivered to the Telstra and Ausgrid sites.

Works to the Ausgrid substation includes upgrades to the roof, all visible facades and new public art fronting the future through-site link. It is noted that a blast wall is likely to be required along the boundary of the through-site link and as such, the public art will be part of that wall, and not affixed to the Ausgrid building.

The proposed works to the Telstra exchange building includes new façade treatments, relocation of the existing driveway to allow for new retail spaces and upgrades to the colonnade, redesigned as part of the design excellence process.

An amount of floor space is to be retained for the future operation of the Telstra and Ausgrid utility buildings. It is proposed to insert a clause in the LEP requiring a minimum 100 square metres of gross floor area is to be retained on each of these sites.

The proposed development concept includes an end of journey facility within the basement and fine-grain ground floor retail premises fronting the future through-site link. The LEP states that the provision of end of trip facilities and fine-grain retail fronting laneways do not contribute towards the total FSR of a building. Clauses will be inserted to make clear that these provisions apply to the subject site. This will be matched with a restrictive covenant to be placed on title ensuring the use of these spaces remains.

Design excellence

Future development on site will be subject to an architectural design competition consistent with the requirements of clause 6.21 of the LEP, the draft Guideline for Site Specific Planning Proposals and the Central Sydney Planning Proposal.

Clause 6.21(7) of the LEP provides for up to 10% additional floor space should a competition take place and design excellence is exhibited. The additional floor space can be accommodated within the 232m building envelope that is the subject of this planning proposal and as such a new provision is included to ensure additional floor space is taken up rather than additional height.

Drafting instructions

To deliver the objectives and intended outcomes of this planning proposal, the APDG provisions under clause 6.25 of the LEP are to be amended. The existing provisions for the APDG block will be retained, with an additional alternative development option inserted.

Drafting instructions are shown at Table 1 below. Words proposed to be deleted are shown in ~~**bold strike through**~~ and words to be inserted are shown in ***bold italics***.

Table 1: Drafting instructions for proposed amendments to APDG provisions in Sydney LEP 2012

6.25 APDG block

- (1) The objective of this clause is to provide for additional building height **and floor space** on parts of certain sites (within the area bounded by Alfred Street, Pitt Street, Dalley Street and George Street (known as the “APDG block”)) if the development of the site provides for publicly accessible open space, lanes and other links through the site.
- (2) This clause applies to land within Area 4 on the Height of Buildings Map.
- (3) Despite clause 4.3, development consent may be granted to the erection of a building with a maximum height of—
 - (a) 200 metres on up to 33% of the area of block 1, or
 - (b) 155 metres on up to 42% of the area of block 2, or
 - (c) 185 metres on up to 24% of the area of block 3, or
 - (d) 248 metres on up to 25% of the area of block 4 and 238 metres on up to 12% of the area of that block, **or**
 - (e) **232 metres on up to 44% of the area of block 5.**

(3A) Despite any other provision of this Plan, a building on block 5 may have a maximum floor space ratio of— ~~e above maximum floor space ratio comprises~~ comprising of the following:

 - (a) **mapped floor space ratio under clause 4.4, and**
 - (b) **accommodation floor space under clause 6.4, and**
 - (c) **an additional site specific amount of floor space ratio of 2.52:1 and**
 - (d) **an amount of additional floor space, to be determined by the consent authority, of up to 10% if the building demonstrates design excellence ~~within the meaning of that clause~~ as defined under clause 6.21(9).**
- (4) Development consent must not be granted under this clause unless the consent authority is satisfied that the development will—
 - (a) include recreation areas and lanes and roads through the site, and
 - (b) include business premises and retail premises that have frontages at ground level (finished) to those recreation areas, lanes and roads, and
 - (c) provide a satisfactory distribution of built form and floor space development **and**
 - (d) **for block 5, improvement works to the utility buildings located on the following land—**
 - (i) **Lot 1 DP 787946, and**
 - (ii) **Lots A and B DP 104160**
- (5) Development consent must not be granted under this clause in relation to development on land in block 1, 2, 3 ~~or~~, 4 **or** 5 unless the consent authority is satisfied that the development relates to the whole of the block and, except as otherwise provided by this clause, no other land.
- (6) Development on land in block 1 may also relate to the whole of any one or more of the following—
 - (a) Lot 1, DP 787946,
 - (b) Lot 180, DP 606866,
 - (c) Lot 1, DP 537286.
- (7) Development on land in block 3 may also relate to the whole of any one or more of the following—
 - (a) Lot 180, DP 606866,
 - (b) Lot 1, DP 537286.

- (7A) For the purposes of calculating a floor space ratio in respect of any building on block 4—
- (a) the site area is taken to be the whole of block 4 (other than Lots 2 and 3, DP 1213767), and
 - (b) the gross floor area of all buildings on that site area is to be taken into account in that calculation other than—
 - (i) any floor area dedicated to the Council, and
 - (ii) up to 3,900 square metres of floor area leased to the Council for a period of not less than 20 years for the purposes of office premises that are to be used to promote business innovation or economic development.
- Note. Similar adjustments will also apply to calculations for additional floor space under Division 1 including in respect of the utilisation of heritage floor space.
- (7B) Despite any other provision of this Plan, a building erected on block 4 **and 5** must not be used for the purpose of residential accommodation or serviced apartments.
- (7C) Lanes development floor space may be utilised by a new building on block 4 **and 5** as if that building were an existing building and for that purpose land (whether or not a public road) may be identified on the Lanes Map as a lane to which clause 6.8 applies.
- (8) For the purposes of calculating a gross floor area in respect to any building on block 5—**
- (a) despite clause 4.5(6), the site area for the calculation of gross floor area includes the following land—**
 - (i) Lot 501, DP 714847, and**
 - (ii) Lots 2 and 3, DP 1092, and**
 - (iii) Lots 1 and 2, DP 1112308, and**
 - (iv) Lot 7, DP110046, and**
 - (v) Lot 6, DP 75338, and**
 - (vi) Lot 4, DP 524306, and**
 - (vii) Lot 1, DP 513109, and**
 - (viii) Lots A and B, DP 104160, and**
 - (ix) Lot 1, DP 787946.**
 - (b) this clause does not limit the operation of clauses 6.6, 6.8 and 6.11 to development to which this sub-clause applies, and**
 - (c) clause 6.21(7)(a) does not apply to the development on the subject land to which this sub-clause applies. and**
 - (d) a minimum amount of floor space of 100 square metres is to be retained for operational purposes on the following land—**
 - (i) Lot 1 DP 787946, and**
 - (ii) Lots A and B DP 104160**
- (89) In this clause—**
- block 1 means—
- (a) Lot 7, DP 629694, and
 - (b) Lot 501, DP 714847, and
 - (c) Lots 2 and 3, DP 1092, and
 - (d) Lots 1 and 2, DP 1112308, and

- (e) Lots A and B, DP 104160, and
- (f) Lot 7, DP110046, and
- (g) Lot 6, DP 75338, and
- (h) Lot 4, DP 524306, and
- (i) Lot 1, DP 513109, and
- (j) the whole of the road known as “Queens Court”.

block 2 means—

- (a) Lot 4, DP 57434, and
- (b) Lot 1, DP 69466, and
- (c) Lot 1, DP 110607, and
- (d) Lot 1, DP 188061, and
- (e) Lots A–D, DP 435746, and
- (f) Lot 20, DP 1063401, and
- (g) Lot 1, DP 913005, and
- (h) Lot 1, DP 107759.

block 3 means Lot 1, DP 220830 and Lot 1, DP 217877.

block 4 means—

- (a) Lot 7, DP 629694, and
- (b) Lots 181 and 182, DP 606865, and
- (c) Lots 1 and 2, DP 880891, and
- (d) Lots 2 and 3, DP 1213767.

block 5 means:

- (a) Lot 501, DP 714847, and**
- (b) Lots 2 and 3, DP 1092, and**
- (c) Lots 1 and 2, DP 1112308, and**
- (d) Lot 7, DP110046, and**
- (e) Lot 6, DP 75338, and**
- (f) Lot 4, DP 524306, and**
- (g) Lot 1, DP 513109, and**
- (h) Lots A and B, DP 104160, and**
- (i) Lot 1, DP 787946.**

4.2 Sydney DCP 2012 amendments

To ensure future development is consistent with the objectives of the APDG controls in the LEP, this planning proposal is accompanied by site-specific provisions for the DCP to ensure a high quality built form and public domain outcome is achieved.

The DCP provisions describe and outline the desired future development and include the following key design considerations:

Planning Proposal - 55 Pitt Street, Sydney

- streets, lanes and through-site links;
- active frontages;
- building height;
- street frontage heights and setbacks;
- building design and bulk;
- parking and vehicular access;
- public art;
- environmentally sustainable development targets; and
- design excellence strategy for block 5.

5. Justification

This section is structured as follows:

- 5.1 – Description of the proposed development concept
- 5.2 – Proposed changes to, benefits of and managing impacts of increasing building height and floor space ratio controls
- 5.3 – Draft development control plan
- 5.4 – Need for the planning proposal
- 5.5 – Relationship to strategic planning framework
- 5.6 – Environmental, social and economic impact
- 5.7 – State and Commonwealth interests

5.1 Description of the proposed development concept

The City's vision for the development of the site is based on an assessment of the landowner's concept, which the City has amended to address issues and achieve improved outcomes.

The proposed development concept includes redevelopment of the site to accommodate a new commercial office tower with retail and active uses fronting new pedestrian links and significant upgrades and improvements to the adjacent utility buildings. Key elements of the proposed development concept is discussed in greater detail below.

Building height

This planning proposal introduces a new alternative building height of 232m for the subject site by amending the APDG provisions in the LEP. There is no change to the mapped maximum building height for the site at 110m.

This will facilitate the delivery of a new premium-grade commercial office tower fronting Pitt Street which is capable of accommodating 50 storeys of new office floor space, above a 45m podium.

To achieve the proposed development concept, this planning proposal seeks to amend clause 6.25 of the LEP, describing 55 Pitt Street as 'block 5' and allowing a maximum building height of 232m to no more than 44% of the block, restricted to non-residential uses only.

New active uses and ground floor retail will front an upgraded public domain including a new north-south through-site link and pedestrian colonnade along Underwood Street. The existing Queens Court laneway will be widened and extended north to Underwood Street, to create a through-site link that is suitable for outdoor dining and connects to the wider pedestrian laneway network.

The proposal delivers on the objective of the APDG block by achieving additional building height in a high quality built form where development provides publicly accessible open space, activated pedestrian laneways and other links through the site.

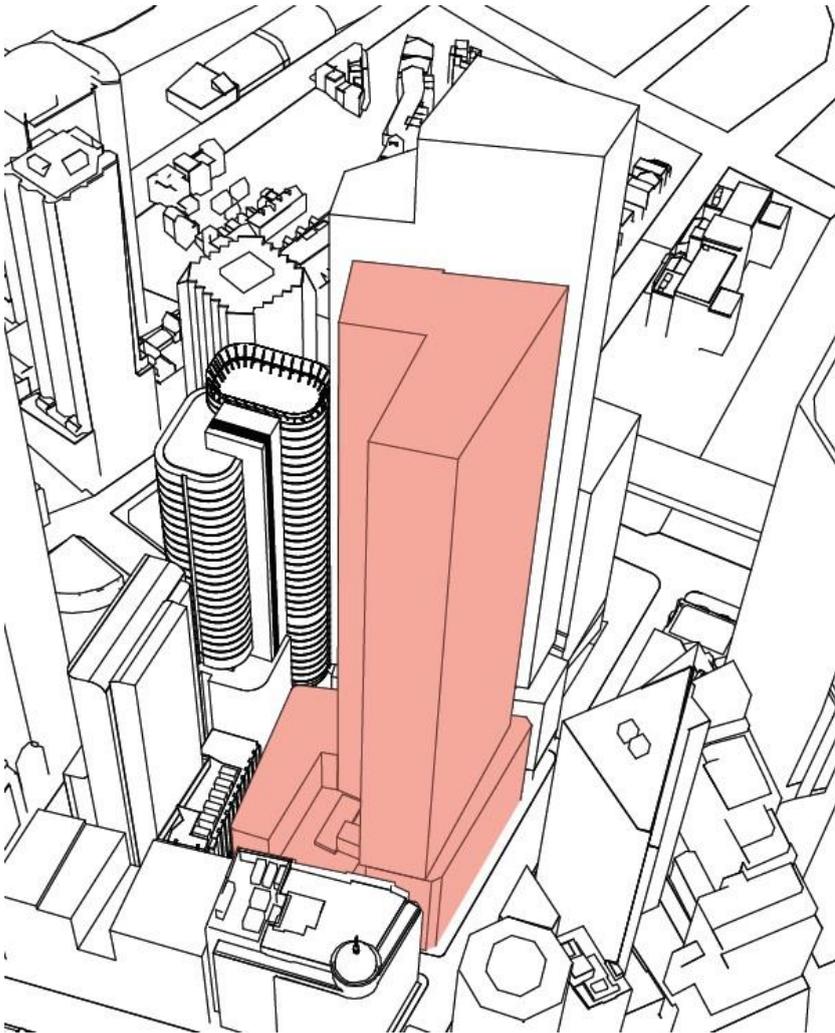
Additionally, the planning proposal also delivers on a key move of the draft Central Sydney Planning Strategy by unlocking additional employment floor space within a designated tower cluster area where opportunities for additional building height and density may be unlocked where balanced with environmental sustainability and public domain amenity.

The proposed new 232m commercial office tower is consistent with its surrounding context, which includes several towers that are currently under construction, in particular the new commercial tower 263m in height directly to the north of the subject site at 33-35 Pitt Street.

The draft Strategy seeks to ensure new buildings with additional building height and density will not result in adverse daylight and wind impacts in the public domain through the use of 8 metre tower setbacks above podium height. The proposed concept includes 3 and 4 metre setback to Underwood Street and a 4 metre setback to Pitt Street that increases to 6 metres at the north east boundary.

As these setbacks vary from those set by the draft Strategy, this planning proposal is accompanied by a sky view factor and wind impact assessment detailing the impacts of the variations to the Strategy and are discussed below.

Figure 18: Planning proposal envelope



Floor space ratio

This planning proposal provides for an additional amount of site specific floor space of 2.52:1 enabling an alternative floor space ratio for the site of 15.02:1, to be included in the APDG controls in the LEP. Future development is also eligible for 10% bonus floor space provision if a competitive design process is undertaken and design excellence is demonstrated, resulting in a maximum floor space ratio of 16.52:1.

The APDG provisions under clause 6.25 of the LEP will be updated to detail the total floor space ratio available for a new commercial development on 'block 5'. No change to the mapped maximum FSR of 8:1 or to the accommodation floor space provisions is proposed.

The indicative concept provides for 70,950m² of new employment generating floor space in a new commercial tower, which will include active uses and ground floor retail opening onto an improved public domain and office uses in the podium and tower above.

An amount of floor space will be transferred from the adjacent Telstra and Ausgrid utility sites and transferred to the subject site to provide for the future development concept. Landowners have stressed the importance of both utility sites in the delivery of essential infrastructure to Central Sydney. The future development application will propose works to the utility buildings in the form of roof and facade upgrades, new retail spaces, however there will be no impact to operations.

Future redevelopment of these utility buildings is not anticipated in the foreseeable future. The amendments to the APDG provisions in the LEP have included the utility sites into block 5, limiting any future development potential. Notwithstanding this, arrangements between Mirvac and the utility landowners include an amount of residual floor space to be retained for future office and operational purposes.

It is noted that a site-specific provision is to be included for these utility buildings in the LEP stipulating that a maximum amount of 100 square metres is to be retained on each of these sites for future operational purposes.

[Pedestrian connections](#)

The current APDG controls in the LEP states that development consent may only be granted if future development delivers recreation areas and lanes through the site. A recreation area is currently under construction on the adjacent block 4 as a new plaza fronting George Street. Block 5 is to provide a new colonnade and through-site link to connect with the wider pedestrian laneway network.

This amendment is to ensure the subject site can be developed given recreational areas and road through the APDG block have been provided by other development blocks.

Site-specific provisions for the APDG block in the draft DCP support this planning proposal by providing additional controls on the pedestrian colonnade and through-site link. The proposal will deliver a high quality public domain with a glazed awning above Queens Court to provide amenity for pedestrians and outdoor dining in the through-site link. The through-site link, glazed awning and associated public art will be included in the Design Excellence Strategy for inclusion in the design competition for refinement and to ensure a high quality outcome.

[Ecologically sustainable development](#)

The future development concept is to achieve ambitious ecologically sustainable development ratings, including a 5.5 star NABERS energy rating, 4 star NABERS water rating and 6 star Green Star office rating. These ratings have been agreed to by the landowner and is consistent with the City's sustainability targets.

The Ecologically Sustainable Development Strategy accompanying the planning proposal posits the targets will be achieved through the provision of photovoltaic panels and efficient energy and water systems.

The provisions in the draft DCP will include the above sustainability targets to ensure future development on site delivers significantly improved environmental performance and sustainability outcomes.

5.2 – Proposed changes to, benefits of and managing impacts of increasing building height and floor space ratio controls

The planning proposal is to provide alternative maximum building height and floor space ratio controls to facilitate commercial and retail development in an acceptable built form.

Commercial use

This planning proposal will facilitate the redevelopment of the subject site for a new 50+ storey tower featuring commercial office and ground floor retail uses. The proposal will deliver approximately 70,000m² of new commercial office floor space, increasing Central Sydney's employment generating floor space capacity.

The proposed concept includes significant public domain upgrades, with new a new retail activated through-site link and pedestrian colonnade, which will accommodate outdoor dining. This ground floor retail will generate increased activity in and around the subject site, improving the amenity and quality of the public domain.

Additional floor space and building height facilitated through this planning proposal is only available to commercial uses. This will be achieved by inserting a restriction on residential and serviced apartment land uses on block 5 into the APDG controls. Additional building height and floor space will only be available on the subject site.

This outcome is consistent with the objectives of the City of Sydney's draft Local Strategic Planning Statement and draft Central Sydney Planning Strategy in that it delivers new growth and additional employment capacity in a prime location that will take advantage of existing and planned infrastructure.

Height and FSR changes

The planning proposal will introduce additional alternative building height and floor space provisions for the subject site into the controls for the APDG block.

The alternative building height and floor space controls are specific to the building envelope outlined in this planning proposal put forward by the landowner. To be eligible for the increased alternative controls, future development on the site is to deliver substantial public benefits, including public domain upgrades and a new through-site link.

New site-specific provisions to be included in clause 6.25 of the LEP, will provide for maximum building height up to 232 metres for 44% of the area of block 5, which is consistent with the proposed building envelope.

The future development concept provides for the distribution of an additional 2.52:1 FSR providing the alternative maximum FSR for the site of 15.02:1 without any significant adverse amenity impacts. Furthermore, the proposed building envelope is also capable of accommodating additional design excellence floor space, up to FSR of 16.52:1 following an architectural competitive design competition.

An Urban Design Study accompanies this planning proposal detailing how the desired density is consistent with the surrounding area and will result in much needed commercial floor space to ensure Central Sydney remains competitive without significant impacts.

Built form

The tower envelope as permitted under the original APDG controls is not currently achievable due to the ongoing provision of critical infrastructure requiring that both utility buildings be retained in situ.

The proposed alternative scheme has been developed to respond to the conditions on site while delivering acceptable daylight and wind conditions within the adjacent public domain.

In particular, the future development concept includes a podium up to 45m in height that is consistent with the surrounding established street wall height and that of the adjacent heritage buildings on the eastern side of Pitt Street.

The proposed envelope allows for a future commercial office building up to 232 metres in height. The proposed built form is consistent with the surrounding existing and future development, particularly within the APDG block, which is to include several new towers of a similar height and scale.

Furthermore, the planning proposal is accompanied by wind and daylight assessments that demonstrate the proposed building envelope would deliver public domain daylight and wind public conditions that are generally equivalent to that of a building envelope that is consistent with the Planning Proposal: Central Sydney and supported by the draft Central Sydney Planning Strategy.

This planning proposal is accompanied by site-specific provisions for the DCP which will describe and outline the desired future development on site to ensure a high quality built form and public outcome is delivered.

Heritage

The subject site is not identified as a heritage item, nor is it located in a heritage conservation area or special character area. The proposed redevelopment of the site facilitated by this planning proposal does not include the demolition of any heritage item.

A few heritage items are located adjacent to the site, including former Gerling House warehouse building on the eastern side of Pitt Street and the Tank Stream, a State heritage item, lies beneath ground level within the Pitt Street road envelope.

The planning proposal is accompanied by a Heritage Impact Statement that highlighted potential impacts to Aboriginal and historical archaeology and to the Tank Stream that may arise as a result of the proposed development. Several mitigation measures have been recommended including a buffer zone to the Tank Street. These measures are considered standard requirements for a development of this nature in this location and therefore do not pose any significant obstacles or issues for the site's redevelopment.

The form of the future development concept is consistent with that of the wider APDG block, consisting of contemporary towers with associated podiums. The podium height of 45m is generally consistent with the predominant street wall height and the height of the adjacent heritage warehouses fronting the eastern side of Pitt Street, ensuring future development does not disrupt the visual setting of these heritage items.

Design excellence

Future development on site will be subject to an architectural design competition consistent with the requirements of clause 6.21 of the LEP, as anticipated by the draft Guideline for Site Specific Planning Proposals and the Central Sydney Planning Proposal.

The planning proposal request was accompanied by a Design Excellence Strategy that provides for an invited architectural design competition consisting of a minimum of five architectural firms and a competition jury will comprise of representatives from the City and the Design Advisory Panel. The accompanying draft DCP includes design excellence provisions for an architectural design competition.

Traffic and transport

The future development concept includes three basement levels to consist of parking for up to 84 vehicles, a loading dock, bicycle parking and associated end of journey facility. The basement will be accessed through a new driveway to Dalley Street between Pitt and the future through-site link.

The planning proposal is accompanied by an assessment of the traffic and transport aspects of the future development. The future concept is anticipated to result in similar levels of traffic generation to existing medium scale development that is presently on site, between 10 to 15 vehicles per hour. Such levels of traffic generation will not result in significant impact to the surrounding road network. The car parking provisions for the indicative scheme, is less than the existing 110 spaces currently provided.

The proponent approached neighbouring landowners to achieve a shared basement with a singular driveway access, however due to utility infrastructure it is not considered feasible to consolidate basements and basement parking access in this instance.

The location of the driveway on Dalley Street provides for a two-way ramp to the basement, with appropriate pedestrian sight-lines and passing opportunities for turning vehicles, while retain sufficient ground floor retail activation. A further detailed traffic, access and parking assessment will occur as part of any future detailed application for the redevelopment of the site.

Due to the operational requirements of Ausgrid, there will be very limited vehicle access required to the through-site link for maintenance vehicles only. The requirements and extent of access will be further explored as part of a detailed development application and discussions with the City.

Pedestrian activity and comfort

The planning proposal is accompanied by a Pedestrian Activity and Comfort Assessment undertaken by Arup that assessed the footpaths surrounding the site with regards to Transport for London's Pedestrian Comfort Levels (PCL).

The assessment noted that all assessed footpaths are currently operating within recommended limits and would be considered generally acceptable following the delivery of future redevelopment of the subject site. Pitt Street was found to experience the majority of the impact, with a 'C' rating in contrast to the current 'A' rating.

The proposal includes upgrades to the surrounding pedestrian network, including a new through-site link running north-south connecting to the APDG pedestrian laneways, pedestrian colonnade to Underwood Street – connecting to existing links to George Street and footpath widening to Dalley Street.

The upgrades to the pedestrian network will ensure the proposal is well placed to take advantage of existing and future transport infrastructure, including the recently opened Sydney Light Rail and the future Sydney Metro.

Ausgrid have advised that a blast wall may be required to be installed on the Queens Court wall of the substation. Should the blast wall be deemed necessary, it will address Ausgrid's concerns relating to pedestrian safety adjacent to an operating substation and will be built and maintained by Mirvac at no cost to the City.

To deliver a high quality environment suitable for outdoor dining and provide additional protection to pedestrians, the Queens Court through-site link will include a glazed awning, fixed to the blast wall bracing. The glazed awning, blast wall and bracing will be concealed by public art to improve its appearance and delivering unique character and visual amenity. More detail on the through-site link, blast wall and associated public art will be determined during the design competition and in the detailed development application.

Geotechnical assessment

The planning proposal includes excavation for three basement levels to consist of parking, site servicing and end of journey facilities. The planning proposal is accompanied by a Geotechnical Desk Study undertaken by Coffey. The subject site consists of a mixture of subsurface conditions including fill, marine deposits and sandstone, however the study found that excavation is possible without significant adverse impacts.

Excavation and construction activities associated with future development has the potential to impact the Tank Stream, a State heritage item that lies below Pitt Street adjacent to subject site. Implementation of suitable retention systems and excavation methods as well as a buffer zone around the Tank Stream will minimise impacts from potential ground movements and vibrations and constriction. Furthermore, there have been preliminary discussions between Sydney Water and the landowner on excavation impacts to the Tank Stream.

5.3 – Draft development control plan

As a consequence of the proposed changes to the APDG controls in the LEP, it is also proposed to amend the DCP to alter the site-specific DCP controls for the ADPG block. The draft DCP amendments will be publicly exhibited with the planning proposal.

The draft amendments retain the existing provisions relating to the development of blocks 1 and 4 and introduces a parallel set of provisions for block 5 to enable to delivery of future development on the site consistent with this planning proposal. The draft DCP address the following key design considerations:

- streets, lanes and through-site links;
- active frontages;
- awnings;
- building height;
- street frontage heights and setbacks;
- building design and bulk;
- parking and vehicular access;
- public art; and
- design excellence provisions.

5.4 – Need for the planning proposal

Is the planning proposal a result of any strategic study or report?

This planning proposal is a result of a request from the landowner to change the alternative planning controls that relate to the subject site. It will facilitate the strategic development outcomes envisaged by previous amendments to the APDG precinct.

The landowner has undertaken a number of studies in support of the request, including an Urban Design Study prepared by FJMT which establishes how the City's vision for the APDG block can be achieved in an alternative manner by unlocking unrealised floor space from the adjoining utility sites with minimal environmental impacts and the provision of a pedestrian colonnade and through-site link that will connect to the wider active laneway network.

The supporting documents are attached as the following appendices to this planning proposal:

- Appendix A: Urban Design Study – FJMT
- Appendix B: Survey Plan – Denny Linker & Co
- Appendix C: Design Excellence Strategy – Ethos Urban
- Appendix D: Proposed Sydney DCP 2012 Amendments – Ethos Urban
- Appendix E: Preliminary Contamination Review – Coffey
- Appendix F: Heritage Assessment and Impact Statement – GML Heritage
- Appendix G: Traffic and Transport Assessment – Colston Budd, Rogers & Kafes
- Appendix H: Wind Impact Assessment – CPP
- Appendix I: Geotechnical Desk Study – Coffey

- Appendix J: Preliminary Flood and WSUD Study – TTW
- Appendix K: Ecological Sustainable Development Strategy – Cundall
- Appendix L: Pedestrian Activity and Comfort Assessment – Arup

Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

A planning proposal to amend the APDG controls in the LEP is the only means of providing an alternative development scenario for the subject site. The proposed amended controls would 'unlock' unrealised development capacity and allow for additional building height in exchange for public domain outcomes.

This can be achieved in a timelier manner by considering these site specific changes, concurrently with the City's proposed changes to the LEP through the Central Sydney Planning Proposal. Noting discussions for the site have been ongoing for sometime.

5.5 – Relationship to strategic planning framework

Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and the exhibited draft strategies)

A Metropolis of Three Cities – The Greater Sydney Region Plan

A Metropolis of Three Cities - The Greater Sydney Region Plan is the NSW Government's overarching strategic plan for growth and change in Sydney. The 20 year plan provides a 40 year vision that seeks to transform Greater Sydney into a metropolis of three cities being the Western Parkland City; the Central River City; and the Eastern Harbour City.

It identifies key challenges facing Greater Sydney, including a projects population increase of 1.7 million and the associated requirements to deliver 725,000 new homes and create 1 million new jobs in NSW by 2036.

The Plan outlines how Greater Sydney will manage growth and change and guide infrastructure delivery and is to be implemented at a local level by District Plans. This planning proposal is consistent with several relevant directions and objectives of the Plan. Specifically, it will:

- **Infrastructure** – Future development on site will support the delivery of recent investment into transport infrastructure and will benefit from the additional capacity available as these additional modes come into service.
- **Liveability** – The proposed development concept includes retail activation to the future pedestrian laneway network prioritising opportunities for people to walk and improving the permeability of Central Sydney.
- **Productivity** – The proposal will deliver additional commercial office space close to existing and future transport infrastructure contributing to Central Sydney's economy.
- **Sustainability** – Delivery of a new building with improved sustainability outcomes than the current building stock is a key priority of this planning proposal.

Eastern City District Plan

The Eastern City District Plan sets out the NSW Government's vision, priorities and actions for the Eastern District including the City of Sydney. It establishes a 20 year vision for the Eastern District to be a global sustainability leader, managing growth while maintaining and enhancing liveability, productivity and attractiveness for residents and visitors. Planning priorities and associated actions for productivity, liveability and sustainability seek to deliver on this vision.

This planning proposal is consistent with the following priorities from the Plan:

- **Planning Priority E1 – Planning for a city supported by infrastructure** – To refresh and renew the offering of commercial office space in this area of Central Sydney, this planning proposal seeks to expand and enhance commercial uses on the site by facilitating the delivery of new premium office space on a site located close to existing and planned new transport infrastructure to maximise efficient use of existing and future new capacity.
- **Planning Priority E7 – Growing a stronger and more competitive Harbour CBD** – Central Sydney lies at the core of the Harbour CBD and the Eastern Economic Corridor. This planning proposal will help facilitate new premium quality commercial floor space within Central Sydney to maximise on the competitive advantage that the site's location provides.
- **Planning Priority E10 – Delivering integrated land use and transport planning for a 30 minute city** – The future development concept satisfies the 30 minute city objective as it will include access to employment opportunities close to existing and future public transport connections across many parts of Greater Sydney within 30 minute travel time.
- **Planning Priority E11 – Growing investment, business opportunities and jobs in strategic centres** – This planning proposal will facilitate a new commercial and retail development on the subject site delivering additional premium office floor space to Central Sydney, which will add to the viability of the Harbour CBD economy.
- **Planning Priority E13 – Supporting growth of targeted industry sectors** – This planning proposal will deliver additional retail and commercial floor space which is available for investment from targeted industry sectors including the retail, visitor economy and knowledge-intensive businesses.
- **Planning Priority E19 – Reducing carbon emissions and managing energy water and waste efficiently** – The proposed development concept will deliver a new commercial and retail building with significantly improved sustainability outcomes. Future development on site is to achieve key ecological sustainable development targets such as minimum 5.5 star NABERS Energy rating, 4 star NABERS Water rating and Green Star rating of 6 stars.

Is the planning proposal consistent with a council's local strategy of other local strategic plan?

Sustainable Sydney 2030

Sustainable Sydney 2030 is the vision for sustainable development of the City of Sydney to 2030 and beyond. It includes 10 strategic directions to guide the future of the City of Sydney. The plan outlines the City's vision for a 'green', 'global' and 'connected' city and sets targets, objectives and actions to achieve this vision. This planning proposal is aligned with the following relevant strategic directions and objectives:

- **Direction 1 – A globally competitive and innovative city** – The proposal will support a future high quality urban design outcome that will provide new employment opportunities. Investment into the site will help contribute to make Sydney attractive to global investors.
- **Direction 2 – A leading environmental performer** – This planning proposal will deliver ecological sustainable development on the site, through minimum 5.5 NABERS Energy ratings, 4 NABERS Water rating and Green Star Office rating of 6 stars.
- **Direction 3 – Integrated transport for a connected City** – Future development on the subject site is well located to capitalise on its proximity to existing and future transport infrastructure including nearby Circular Quay train station, light rail and bus stops and future Metro stations in Central Sydney.
- **Direction 4 – A city for walking and cycling** – The planning proposal supports the creation of a network of new retail activated laneways and a new through-site link that supports a more people oriented city.

- **Direction 5 – A lively and engaging city centre** – The mix of uses on the subject site will deliver improved levels of activation to this part of the City. Future ‘fine grain’ retail premises will be encouraged to contribute to a livelier, engaging city.
- **Direction 6 – Vibrant local communities and economies** – Future development facilitated by this planning proposal will enhance the CBD and nearby harbour area through increased business opportunities for workers and new retail activation for local residents and tourists.
- **Direction 7 – A cultural and creative city** – Public art is offered as part of the voluntary planning agreement associated with this planning proposal, providing new creative and cultural experiences within future development.
- **Direction 9 – Sustainable development, renewal and design** – This planning proposal will support future development that is more ecologically sustainable development on the site through ambitious sustainability benchmarks.

Local Strategic Planning Statement

City of Sydney’s recently endorsed Local Strategic Planning Statement sets out the land use planning context, 20-year vision and planning priorities to positively guide change towards the City’s vision for a green, global and connected city. The planning statement explains how the planning system will manage that change to achieve the desired outcomes and guides future changes to controls, including those sought by proponents through planning proposals. This planning proposal gives effect to the following planning priorities of the Statement:

Infrastructure

- **1. Movement for walkable neighbourhoods and a connected city** – Future development concept for the subject site will significantly contribute to the emerging pedestrian network in the APDG block through the delivery of a new through-site link and new pedestrian colonnade along Underwood Street.
- **2. Align development and growth with supporting infrastructure** – The subject site is well located to take advantage of existing and future planned transport infrastructure including the recently opened light rail and Sydney Metro that is currently under construction, which will both increase the public transport capacity within Central Sydney considerably.
- **3. Supporting community wellbeing with social infrastructure** – The proposed development concept includes delivery of new pedestrian links connecting to the surrounding network of pedestrian laneways improving the accessibility, capacity and function of the City’s community infrastructure.

Liveability

- **5. Creating great places** – The planning proposal will improve walkability within the APDG block connecting pedestrians, tourists and workers with retail activation, public transport and employment through the new pedestrian connections to the City’s emerging network of retail-activated laneways suitable for outdoor dining.

Productivity

- **7. Growing a stronger, more competitive Central Sydney** – This planning proposal supports growth in Central Sydney by facilitating a development alternative for the APDG block for additional commercial office floor space which will increase the capacity for economic and employment growth.

Sustainability

- **11. Creating better buildings and places to reduce emissions and water and use water efficiently** – Future development facilitated through this planning proposal will be

required to meet ambitious sustainability benchmarks, ensuring new buildings will be more ecologically sustainable than the existing building stock.

Draft Central Sydney Planning Strategy

The Central Sydney Planning Strategy is a 20-year growth strategy that revises previously planning controls and delivers on the City’s Sustainable Sydney 2030 program. As the economic heart of Australia’s most global city, Central Sydney plays a critical role in the continued growth and economic success of wider Sydney and the national economy.

The Strategy includes opportunities for additional height and density in the right locations, balanced with environmental sustainability initiatives, and sets criteria for excellence in urban design. This planning proposal is aligned with the following relevant key moves of the Strategy:

- **1. Prioritise employment growth and increase capacity** – This planning proposal will facilitate the delivery of additional commercial office floor space, helping contribute to increase employment capacity and growth within Central Sydney.
- **2. Ensure development responds to context** – This planning proposal is accompanied by a site-specific DCP which will include provisions to ensure future development on site responds to its context with sufficient building setbacks and does not result in adverse wind and daylight impacts in the public domain.
- **4. Provide employment growth in new tower clusters** – The subject site is located in one of the identified new tower clusters in Central Sydney where additional building height may be accommodated where improved public spaces are delivered in association with growth.
- **5. Ensure infrastructure keeps pace with growth** – This planning proposal facilitates a significant contribution towards community infrastructure in Central Sydney and towards the provision of affordable housing.
- **6. Move towards a more sustainable city** – Future development is to achieve the ambitious sustainability targets as set out in this planning proposal, consistent with the draft Strategy.
- **8. Move people more easily** – 55 Pitt Street is well located to capitalise on the recent NSW Government investment in public transport and as such the upgrades to the pedestrian network as a result of this planning proposal will make it easier for people to walk and cycle in this part of Central Sydney.
- **9. Reaffirm commitment to design excellence** – Future development on site will be subject to a full competitive design competition with the draft DCP to include design excellence provisions to ensure a high quality built form.

Is the planning proposal consistent with applicable state environmental planning policies (SEPPs)?

This planning proposal consistency with applicable SEPPs and deemed SEPPs (formerly known as Regional Environmental Plans (REPs)) is shown in Table 2. In this table, ‘consistent’ means that the planning proposal does not contradict or hinder the application of the relevant SEPP or REP.

Table 2 – Consistency with SEPPs and REPs

SEPPs with which this planning proposal is consistent	SEPP 1 – Development Standards; SEPP 19—Bushland in Urban Areas; SEPP 21—Caravan Parks; SEPP 30—Intensive Agriculture; SEPP 33—Hazardous and Offensive Development; SEPP 50—Canal Estate Development; SEPP 55—Remediation of Land; SEPP 62—Sustainable Aquaculture; SEPP 70—Affordable Housing (Revised Schemes); SEPP (Affordable Rental Housing) 2009;
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	SEPP (Educational Establishments and Child Care Facilities) 2017; SEPP (Exempt and Complying Development Codes) 2008; SEPP (Infrastructure) 2007; SEPP (Mining, Petroleum Production and Extractive Industries) 2007; SEPP (Miscellaneous Consent Provisions) 2007; SEPP (State and Regional Development) 2011; SEPP (State Significant Precincts) 2005; SEPP (Vegetation in Non-Rural Areas) 2017; SEPP (Coastal Management) 2018
SEPPs that are not applicable to this planning proposal	SEPP 36—Manufactured Home Estates; SEPP 44—Koala Habitat Protection; SEPP 47—Moore Park Showground; SEPP 52—Farm Dams and Other Works in Land and Water Management Plan Areas; SEPP 64—Advertising and Signage; SEPP 65—Design Quality of Residential Flat Development; SEPP (Building Sustainability Index: BASIX) 2004; SEPP (Housing for Seniors or People with a Disability) 2004; SEPP (Integration and Repeals) 2016; SEPP (Kosciuszko National Park— Alpine Resorts) 2007; SEPP (Kurnell Peninsula) 1989; SEPP (Penrith Lakes Scheme) 1989; SEPP (Rural Lands) 2008; SEPP (Sydney Drinking Water Catchment) 2011; SEPP (Sydney Region Growth Centres) 2006; SEPP (Three Ports) 2013; SEPP (Urban Renewal) 2010; SEPP (Western Sydney Employment Area) 2009; SEPP (Western Sydney Parklands) 2009
REPs with which this planning proposal is consistent	Sydney REP (Sydney Harbour Catchment) 2005
REPs that are not applicable to this planning proposal	Sydney REP 8—(Central Coast Plateau Areas); Sydney REP 9—Extractive Industry (No 2—1995); Sydney REP 16—Walsh Bay; Sydney REP 20—Hawkesbury- Nepean River (No 2—1997); Sydney REP 24—Homebush Bay Area; Sydney REP 26—City West; Sydney REP 30—St Marys; Sydney REP 33—Cooks Cove; Greater Metropolitan REP No 2— Georges River Catchment; Darling Harbour Development Plan No. 1; Sydney Cove Redevelopment Authority Scheme.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No 55 – Remediation of Land promotes remediation of contaminated land for the purpose of reducing the risk of harm to human health. When rezoning land and as part of development applications, it is required to be considered and to ensure remediation work meets certain standards.

The planning proposal is accompanied by a preliminary contamination assessment, which concludes some potentially contaminating activities have occurred on the site, including fill of unknown origin, impacts from storage tanks and historical spills.

Further investigation of these potential contamination is recommended to be undertaken. Notwithstanding, the potential contamination issues identified are unlikely to significantly impact future redevelopment of the site. The site’s suitability will be demonstrated as part of a future detailed development application for the site.

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (Infrastructure) 2007 aims to facilitate the effective delivery of infrastructure across the State and identifies matters to be considered in the assessment of development adjacent to particular types of infrastructure.

The subject site intersects the Sydney Metro corridor which passes directly beneath at a depth of 24 metres. This proximity requires future development application to consider potential impacts of the proposal on the corridor and will require concurrence from Transport from NSW.

Additionally, as any future development on the site will be considered a 'traffic generating development' for the purposes of the SEPP as over 10,000sq.m of commercial floor space is proposed, Transport for NSW require concurrence on this matter as well.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Under Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, 55 Pitt Street is located within the Sydney Harbour Catchment Boundary but not within the Foreshores and Waterways Area Boundary.

The planning proposal does not contradict or hinder the application of the planning principles for Sydney Harbour Catchment, as set out in Clause 13 of the REP.

Is the planning proposal consistent with applicable Ministerial Directions?

The planning proposal's is consistent with the applicable ministerial directions as shown in table 3.

Table 3 – Consistency with Ministerial Directions

<p>Ministerial Directions with which this planning proposal is consistent</p>	<p>1.1 Business and Industrial Zones; 2.3 Heritage Conservation; 3.2 Caravan Parks and Manufactured Home Estates; 3.3 Home occupations; 3.4 Integrating Land use and Transport; 3.5 Development Near Licensed Aerodromes; 4.1 Acid Sulfate Soils; 4.3 Flood Prone Land; 5.10 Implementation of Regional Plans; 6.1 Approval and Referral Requirements; 6.2 Reserving Land for Public Purposes; 6.3 Site Specific Provisions; 7.1 Implementation of A Plan for Growing Sydney</p>
<p>Ministerial Directions that are not applicable to this planning proposal</p>	<p>1.2 Rural Zones; 1.3 Mining, Petroleum Production and Extractive Industries; 1.4 Oyster Aquaculture; 1.5 Rural Lands; 2.1 Environmental Protection Zones; 2.2 Coastal Protection; 2.4 Recreation Vehicle Areas; 2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs; 3.1 Residential Zones; 4.2 Mine subsidence and Unstable land; 4.4 Planning for Bushfire Protection; 5.2 Sydney Drinking Water Catchments; 5.3 Farmland of State and Regional Significance on the NSW Far North Coast; 5.4 Commercial and Retail Development along the Pacific Highway, North Coast; 5.8 Second Sydney Airport, Badgerys Creek; 5.9 North West Rail Link Corridor Strategy; 7.2 Implementation of Greater Macarthur Land Release Investigation; 7.3 Parramatta Road Corridor Urban Transformation Strategy; 7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan; 7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan; 7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure</p>

3.5 Development Near Licenced Aerodromes

This Ministerial Direction seeks to ensure the safe and effective operation of regulated airports is not compromised by development that might constitute an obstruction or potential hazard to aircraft flying in the vicinity.

The proposed development concept includes construction of a new tower up to 232m, which would encroach into the Obstacle Limitation Surface (OLS), and as such, Direction 3.5 applies. Clause 4 of the Ministerial Direction states that in preparation of the planning proposal, the relevant planning authority is to consult with the operator of the airport to prepare appropriate height controls and ensure development on the subject site is not incompatible with the airport's operation.

This planning proposal is not consistent with Ministerial Direction 3.5, however this can be addressed through consultation with the relevant agencies as part of the public exhibition process.

The planning proposal process for this project includes consultation with relevant public authorities following the gateway determination, which in this instance includes consultation with Sydney Airport Corporation; Airservices Australia, and Civil Aviation Safety Authority.

Following consultation with these public agencies, the planning proposal will be amended where necessary and reported back to Council for final approval prior to drafting the relevant amendments to the LEP.

6.3 Site Specific Provisions

The objective of this Ministerial Direction is to discourage unnecessarily restrictive site specific planning controls.

This planning proposal is inconsistent with Ministerial Direction 6.3, however it is justified as it addresses existing site-specific controls in the LEP. The planning proposal amends the APDG controls for the subject site to facilitate redevelopment for a new commercial tower up to 232m in height, with upgrades to the surrounding public domain and utility buildings.

The proposed provisions to be included in the LEP are consistent with the objectives of the zone and the intent for the APDG block, as well as the City's vision for future development in Central Sydney and as such, will not result in any unnecessarily restrictive site-specific planning controls.

5.6 – Environmental, social and economic impact

Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The planning proposal is unlikely to adversely affect any critical habitat or threatened species, populations or ecological communities or their habitats. The subject site is located in Central Sydney, which does not contain any known critical habitats or threatened species, populations or ecological communities.

Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The changes to the maximum building height and floor space ratio will provide for the redevelopment of the subject site.

It is unlikely that the proposed amendments to the APDG controls in the LEP will result in adverse environmental impacts that cannot be controlled. Existing policies, regulations and standards are already in place to ensure environmental impacts are mitigated during the construction phase and eventual use of the development.

The proposed scheme has been developed in collaboration with the proponent, with any environmental effects resulting from the proposal having been identified and resolved during assessment.

The key environmental considerations arising from the planning proposal, particularly in relation to urban amenity, are discussed in detail below.

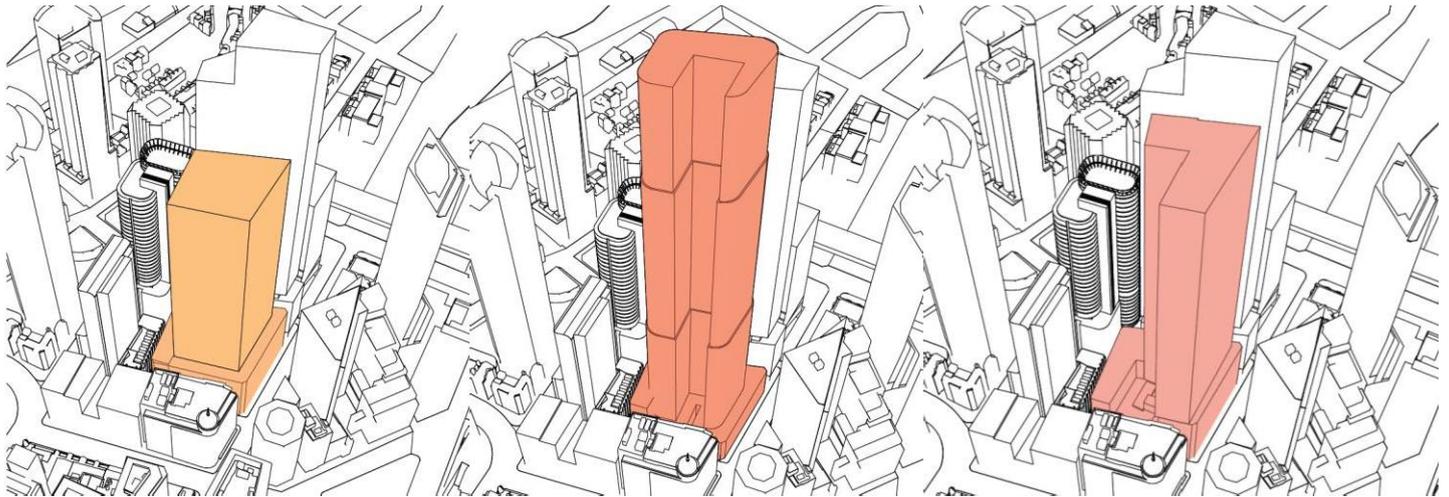
Tower Separation and Setbacks

The building envelope facilitated by this planning proposal varies to the envelopes available under the APDG alternative controls in the LEP 2012 and the draft Central Sydney Planning Strategy.

The APDG provides for a building envelope across the entire block, up to 200m in height and minimum 8m tower setbacks. The envelope available under the draft Strategy includes maximum building height of up to 305m in this location, with minimum tower setbacks of 8m to all street frontages.

The proposed building envelope sought under this planning proposal is 232m in height with tower setbacks of 3 and 4 metres to Underwood Street, between 4 and 6 metres on Pitt Street and 1 metre to Queens Court. Figure 19 includes the proposed building envelope and the maximum envelopes available under the current APDG controls and the draft Strategy.

Figure 19: APDG envelope (left), draft Central Sydney Planning Strategy envelope (centre) and proposed envelope under this planning proposal (right)



The minimum separation between the proposed building envelope and the adjacent tower on the north side of Underwood Street is 8.1m. This separation is consistent with the minimum building separations of other buildings and built form character in Central Sydney. Furthermore, the closest sections of both buildings will contain lift cores and as such will not result in loss of significant views.

Despite the variation with the tower setbacks, the proposed building envelope is consistent with the objectives of the APDG controls in that the planning proposal will deliver improved pedestrian connections through the site. Furthermore, the proposal will deliver additional employment generating floor space without significantly impacting pedestrian amenity in the public domain in line with the Strategy.

Solar access and overshadowing

Clause 6.19 of the LEP 2012 prevents new buildings from causing additional overshadowing to certain public places. The public places within proximity of the subject site that could potentially be impacted include Australia Square Plaza, Lang Park and Macquarie Place.

A shadow analysis has been prepared by FJMT and is included in the Urban Design Study that accompanies the planning proposal. The results illustrate that the proposed envelope will not result in any additional overshadowing to the nearby identified public places within the specified times.

The proposed building envelope does result in additional overshadowing, however the proposal will have minimal additional impact on the public domain, given the extent of overshadowing from existing and approved buildings within the APDG block and where the shadow is cast (i.e. on roof tops).

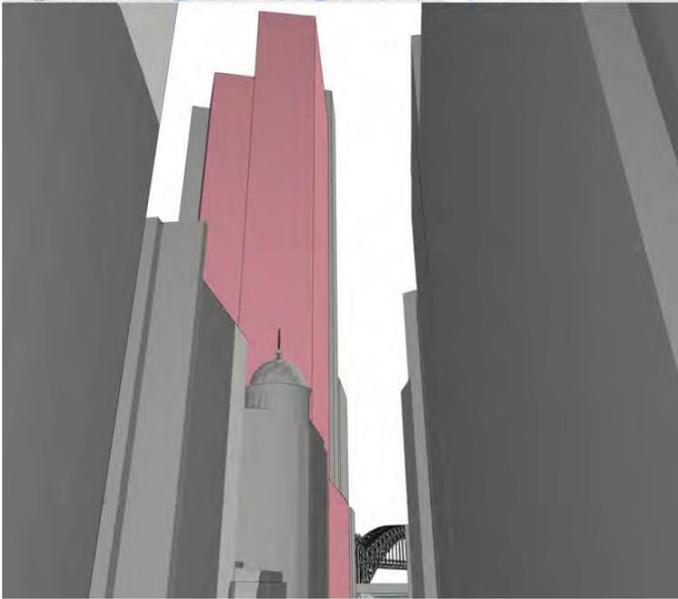
View analysis

The Urban Design Study that accompanied the planning proposal includes preliminary view study undertaken by FJMT exploring the impact of the future development concept from key viewpoints in the public domain.

The study found that the proposed envelope's alignment forward of the adjacent tower to the north does not detract from significant views along Pitt Street, nor will it impact sky views. The proposed podium is consistent with that of adjacent buildings, nearby heritage items and other tower podiums and as such maintains the alignment and form of the street wall.

The variation to the tower's setback will not have an adverse impact on the view corridor looking north along Pitt Street towards Circular Quay and the Harbour Bridge as shown in figure 20.

Figure 20: View of proposed envelope looking north along Pitt Street



Daylight access / Sky view factor

The draft Central Sydney Planning Strategy seeks to unlock additional employment floor space in Central Sydney through opportunities for additional height and density in locations that would not result in adverse impacts to public domain amenity including daylight access.

The draft Strategy provides for 'base case' building envelopes to the aviation PANS OPS level with 8 metre setbacks to all boundaries and a curved and tapered form. Planning proposals that vary from this envelope are to demonstrate equivalent or improved daylight access to the public domain.

To address this, the planning proposal is accompanied by a Daylight Analysis undertaken by FJMT. The analysis measured the daylight levels within the public domain up to 200m from the site, represented numerically as a sky view factor.

The proposed building envelope which includes a building envelope 232m in height with setbacks of 3 and 4 metres to Underwood Street, between 4 and 6 metres on Pitt Street and 1 metre to Queens Court was compared to the base case envelope.

The results found that the proposed building envelope results in a minor improvement from the base case envelope. The overall difference of 0.001031% in the sky view factor within proximity of the site. The analysis found that the proposed building envelope facilitated by this planning proposal will maintain an acceptable level of daylight access to the public domain.

Wind assessment

A Wind Impact Assessment undertaken by CPP accompanied this planning proposal to assess pedestrian wind comfort at ground level as a result of future development on site. The assessment included a wind tunnel study of the subject site and surrounds to a radius of 570 metres at a 1:400 scale.

The assessment included wind equivalence testing of three scenarios - existing built form conditions; proposed building envelope; and a base case envelope that is consistent with the draft Strategy, which encompasses the whole block, with 8 metre setbacks to all street

frontages and height of 305 metres. Locations close to the subject site were tested to determine the impacts of future development on wind conditions.

The wind assessment found that wind comfort was generally equivalent across the two envelopes that were tested. The proposed building envelope generally displayed equivalent wind results with the draft Strategy envelope. While testing identified some differences in wind speeds, it concluded that they were typically small in nature and that there would be little perceivable difference. Locations on Pitt Street were found to be suitable for pedestrian walking activities, conditions in Dalley Street, Underwood Street remained calm and suitable for pedestrian standing.

Wind conditions in Queens Court were found to increase by up to 1.5m/s due to the massing of the building envelope. While this is a minor increase in wind speed, to ensure a suitable environment for outdoor dining is maintained and deliver additional pedestrian amenity, a glazed awning is to be fixed above the through-site link. The glazed awning will be attached to the overhead bracing for the blast wall and integrated with public art to ensure a high quality new public benefit is delivered.

One location on Pitt Street, close to the intersection with Bridge Street to the south-east of the site, was found to experience exceedances of the wind safety standard of 25m/s. It is worth noting, that this particular location experiences a similar exceedance of the safety standard under the existing conditions and an envelope that is compliant with the draft Strategy. Such results indicate that the wind conditions in this location is generally a result of the general massing in the northern CBD rather than this specific tower envelope form.

Flooding

The subject site and adjacent public domain may be potentially flood affected in larger rain events due to its location in the natural floor basin of the Tank Stream. The planning proposal is accompanied by a Preliminary Flood Study that found the 20-year flood level at RL 4.15m and 100-year floor level at RL 4.30m on Dalley Street adjacent to the future basement carpark entrance.

The Preliminary Flood Study included the following flood mitigation design principles to protect future development from flooding:

- the basement carpark ramp rises to a crest of RL 4.15m, the 20 year flood level with a flood gate to RL 5.20m, the probable maximum floor level;
- ground level of the future through-site link rises to RL 4.30m to prevent a 100 year level flood event passing through to Underwood Street and protecting active frontages; and
- future development on site is to be planned and designed to incorporate future conversion of Dalley and Underwood Street into flush shared/pedestrian zones and associated stormwater works.

The use of flood gates to achieve flood protection is not consistent with the City's Interim Flood Policy, however there is similar precedence for comparable circumstances on other new developments elsewhere in the APDG precinct. Further refinement and detailed analysis of flooding impacts will occur as part of a design competition and future detailed application for the redevelopment of the site.

The draft DCP that accompanies this planning proposal sets the flood planning level includes site-specific flood risk management provisions to minimise basement car park flood risk.

Has the planning proposal adequately addressed any social and economic effects?

This planning proposal provides an opportunity for the redevelopment of a site within the APDG block. Redevelopment will allow for positive social and economic effects including:

- Providing 70,000m² of commercial and retail floor space to contribute to and strengthen Sydney's role as a globally competitive City;

- Creating an estimated 4,000 additional jobs;
- Increase accessibility and activation of a through-site link; and
- Improving safety and amenity of the surrounding public domain.

5.7 – State and Commonwealth interests

Is there adequate public infrastructure for the planning proposal?

As the subject site is in Central Sydney, it is already well serviced by the full range of public utilities including electricity, telecommunications, water, sewer and stormwater. It is expected that these services would be upgraded where required by the developer.

The proposal will provide new and upgraded pedestrian infrastructure across the site, helping future development capitalise on its location being well placed to take advantage of existing transport infrastructure and recent investment in the new Sydney Light Rail and the planned Sydney Metro which will significantly increase transport capacity in Central Sydney.

The detailed development application will be subject to the statutory development contributions, which will contribute to the provision of other community facilities, the demand for which will be generated by the development.

What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The gateway determination will advise the public authorities to be consulted as part of this planning proposal process. Any issues raised will be incorporated into this planning proposal following consultation in the public exhibition period.

As future development on the site requires excavation and is located directly above the Sydney Metro corridor, the detailed development application requires concurrent approval from Sydney Metro before approval from the City.

Clause 7.16 of the LEP requires concurrent approval from Sydney Airport for all works proposed to penetrate the Operations Limitation Surface (OLS) height, which is 156m in Central Sydney.

At 232m in height, the future development concept would require approval under the Airports Act 1996 before the detailed development application can be approved by the City.

6. Mapping

This planning proposal ~~does not include any amendments to maps~~ **includes a change to Sheet 14 of the Lanes Map of the LEP to reflect that future development on site is eligible to Lanes development floor space pursuant to clause 6.8 of the LEP due to the proposed extension of Queens Court north to create a new pedestrianised laneway that will connect with Underwood Street. The existing LEP Lanes Map is shown in Figure 21 and the proposed changes to the map are shown in Figure 22.**

Figure 21: Existing Sheet 14 of the LEP Lanes Map – subject site shown in red



Figure 22: Proposed changes to Sheet 14 of the LEP Lanes Map – subject site shown in red



~~No change will be made to any maps contained in~~ **The other changes to the LEP as part of this planning proposal, instead additional building height and floor space ratio is proposed to be included through a new subclause under clause 6.25 as discussed earlier in this planning proposal document.**

The figures in the APDG provisions in section 6.1.4 – 6.1.7 of the DCP will be updated to reflect the proposed future development concept as discussed in this planning proposal. The planning proposal will also update the Active frontages map in DCP to include active ground floor uses on the future through-site link.

The updated figures and map are detailed in the draft DCP, included as an appendix to this planning proposal.

7. Community consultation

This planning proposal is to be exhibited in accordance with the gateway determination once issued by the Department of Planning, Industry and Environment.

It is anticipated the gateway determination will require public exhibition for a period of not less than 28 days in accordance with the Environmental Planning and Assessment Act and section 4.5 of A Guide to preparing Local Environmental Plans.

Notification of the public exhibition will be via:

- The City of Sydney website; and
- Sydney Morning Herald

Exhibition material will be made available on the City of Sydney website and, if possible, at Town Hall House at 456 Kent Street, Sydney.

Consultation with relevant NSW agencies, authorities and other relevant organisations will be undertaken in accordance with the gateway determination.

8. Project timeline

The anticipated timeframe for the completion of the planning proposal is as follows:

Stage	Timeframe
Commencement / Gateway Determination	June 2020
Government agency consultation	July 2020
Public exhibition	July 2020
Consideration of submissions	August 2020
Post exhibition consideration of proposal	October 2020
Draft and finalise LEP	November 2020
LEP made	December 2020
Plan forwarded to Department of Planning, Industry and Environment for notification	December 2020



Attachment C

**Draft Development Control Plan
55 Pitt Street, Sydney
Amended November 2020**



Sydney Development Control Plan 2012 – 55 Pitt Street, Sydney

November 2020

1. The purpose of the Development Control Plan

The purpose of this Development Control Plan (DCP) is to amend *Sydney Development Control Plan 2012*, which was adopted by Council on 14 May 2012 and came into effect on 14 December 2012.

The provisions guide future development of the block bounded by Alfred, Pitt, Dalley and George Streets, Sydney (the APDG Block) when development is subject to the 'alternative' site-specific provisions in *Sydney Local Environmental Plan 2012* (Sydney LEP 2012) that relate to the block.

The provisions of this DCP will allow for another option for the distribution of built form and open space within the APDG Block.

The planning proposal and this DCP have been amended, existing text shown in *italics*, new text shown as underlined and deleted text shown as ~~strikethrough~~. Amendments dated November 2020 are shown in ***bold italics*** and deleted text shown as ~~**bold strikethrough**~~ and updates to the figures are indicated by a red cloud.

2. Citation

This amendment may be referred to as *Sydney Development Control Plan 2012 – 55 Pitt Street, Sydney*.

3. Land covered by this plan

This land applies to the land bounded by Alfred, Pitt, Dalley and George Streets, Sydney and known as the APDG Block.

4. Relationship of this plan to Sydney Development Control Plan 2012

This plan amends the Sydney Development Control Plan 2012 in the manner set out in Schedule 1 below.

Schedule 1 – Amendment to Sydney Development Control Plan

Section 6.1.4 The APDG site (bounded by Alfred, Pitt, Dalley and George Streets)

Amend the text in this section as shown below with existing text shown in *italics*, new text shown as underlined and deleted text shown as ~~strikethrough~~.

The following objectives and provisions apply to the APDG site bounded by Alfred, Pitt, Dalley and George Streets, Sydney, as shown in Figure 6.1 Specific Sites map and Figure 6.6 The APDG Site Plan.

If a development proposal within the APDG site is subject to Clause 6.25 APDG block in Sydney LEP 2012, then the provisions contained in this section of the DCP override similar provisions in this DCP, where there is inconsistency.

If development proposed for 1 Alfred Street retains the design integrity and is generally in accordance with the winning entry of the architectural competition held in November 2009, known as the Kerry Hills Architects Scheme, then the building envelope controls shown in Figure 6.17 1 Alfred Street Site Development Control Envelope (Kerry Hill Architects Scheme), override similar provisions where there is inconsistency.

Clause 6.25 APDG block in Sydney LEP 2012 enables taller buildings to parts of the street block in order to provide an integrated lane network, a publicly accessible open space and greater tower separation for better views and daylight access. These benefits can be achieved by certain landholdings being developed cooperatively.

There are a number of alternate outcomes to achieve these objectives. Development Blocks 1, 2 and 3 under clause 6.25 of SLEP 2012 are one option while Development 4 and Development Block 5 under clause 6.25 of SLEP 2012 allows for another option.

In this DCP, Figures 6.7 to 6.16 apply to the development of Blocks 1, 2 or 3 and Figures 6.7A to 6.16A apply to the development of Block 4 and Block 5 as relevant.

Objectives

- (a) Provide detailed controls to satisfy the provisions of Clause 6.25 APDG block in Sydney LEP 2012.*
- (b) Facilitate the redevelopment of the site to achieve a high quality urban form.*
- (c) Ensure that development on the APDG site results in major public benefits.*
- (d) Ensure the publicly accessible open space is fronted with active uses and linked to surrounding streets with a network of lanes and through-site links.*
- (e) Maintain the legibility of the historical alignment of laneways and through-site links within the site.*
- (f) Enable additional building height at certain sites where the development of the site provides for publicly accessible open space, lanes and through-site links.*
- (g) Encourage commercial uses at the southern end of the site.*
- (h) Protect sunlight access to Australia Square.*
- (i) Create opportunities for views to and from Circular Quay.*

- (j) Deliver an activated Queens Court through-site link suitable for outdoor dining and enhanced by visual connections to adjacent office space in the podium and retail space.

6.1.5 – Local Infrastructure and Public Domain

Amend the text in this section as shown below with existing text shown in *italics*, new text shown as underlined and deleted text shown as ~~strikethrough~~.

Provisions

6.1.5.1 General

- (1) *Where required to be provided, new streets, lanes and through-site links are to be provided in the locations identified in Figure 6.7 Public domain plan for blocks 1, 2 and 3 and in Figure 6.7A Public domain plan Option B for block 4 and block 5, and are to be designed and constructed in accordance with Figure 6.8 Street, lanes and through-site links for blocks, 1, 2 and 3 and in Figure 6.8A Streets, lanes and through-site links Option B for block 4 and block 5.*
- (2) *Ensure the design of the laneway network and square integrates with the ground floor uses of adjoining buildings and provides opportunities for public external leisure activities.*

6.1.5.2 Streets, lanes and through-site links

- (1) *Through-site links are to be provided in the locations identified on the Through-site links map and Figure 6.9 Public domain principles plan for blocks 1, 2 and 3 and in Figure 6.9A Public domain principles plan Option B for block 4 and block 5.*
- (2) *Extend the existing north-south alignment of Underwood Street up to Alfred Street to enhance pedestrian movement on the site.*
- (3) *Create opportunities for outdoor dining along Alfred and George Streets.*
- (4) *Bridge the level change between George and Pitt Streets through terracing along Alfred Street whilst maintaining equal access.*
- (5) *Design Pitt Street to allow safe crossing points between Bulletin Place and Rugby Place and Bulletin Place and Underwood Street.*
- (6) *Dalley Street is to have the character of a wide lane and function as a service street fronting with the service entries of the Stock Exchange building facing Bridge Street.*
- (7) *Introduce widened footpaths on the southern side of Underwood Street, adjoining the new square and on the northern side of Dalley Street to the crossing of George Street at Grosvenor Street.*
- (8) *Design laneway thresholds that indicate pedestrian crossing priority.*
- (9) *Ensure lane alignments maintain clear sight-lines from each end.*
- (10) *Where required to be provided, introduce a north-south lane and through-site link in the location shown as 1A in Figures 6.9 and 6.9A Public domain principles plan. The link will connect Herald Square and Dalley Street and have the character of a narrow through-site pedestrian link to the north and shared use lane to the south.*
- (11) *Rugby Place identified as 1B on Figures 6.9 and 6.9A Public domain principles plan is to be a narrow lane for its entire length and is to widen towards the approach to the Rugby Club to create a seating area and encourage outdoor dining.*

- (12) *Enhance pedestrian amenity of the redevelopment of 188-194A George Street by introducing widened footpaths on the southern side of Crane Place, identified as 1C on Figure 6.9 Public domain principles plan.*
- (13) *For a development of block 4, integrate the George St plaza, marked G on Figure 6.9A Public domain principles plan, with the publicly accessible area on the northern part of 188-194A George Street.*
- (14) *For a development of block 1 and block 5 enhance pedestrian amenity by introducing widened footpaths on the southern side of Underwood Street, identified as 1D on Figures 6.9 and Figure 6.9A Public domain principles plan.*
- (15) *Enhance pedestrian amenity by introducing widened footpaths on the northern side of the through-site link identified as 1E on Figure 6.9 Public domain principles plan.*
- (16) *Through-site links are to have a clear height up to the levels indicated on Figures 6.7 and 6.7A Public domain plan.*
- (17) Enhance pedestrian amenity by extended and widening Queens Court to become an accessible through-site link identified as 1F on Figure 6.9 and 6.9A Public domain principles plan.
- (18) The design of the Queens Court through-site link is to:
- (a) be of a high standard of visual quality;
 - (b) be activated through ~~a range of uses on the basement, ground and first floors that include~~ double-height ***fine grain retail*** spaces that provide direct and visual connections to the through-site link;
 - (c) include a high-level glazed ***roof/awning*** to a minimum height of ***9.2 10m*** above the finished ground level, to ensure high quality amenity is delivered that supports outdoor dining;
 - (d) incorporate public art to ~~conceal~~ the blast wall, bracing and ***roof/glazed awning*** in a holistic manner;
 - (e) have a minimum clearance of 5.4m between the underside of the bridge link over part of the through-site link and the finished ground level. The bridge link is to be no greater than 3m ***wide total external width***.
 - (f) reduce flooding impacts, be accessible and maintain clear sight lines from each end;
 - (g) include ground level as shown in Figure 6.19 to prevent a 100 year flood event passing through to Underwood Street;
 - (h) be of high quality materials in accordance with the City's Public Domain Codes.
- (19) The building is to be planned and designed to accommodate future conversion of Dalley Street and Underwood Street into shared and/or pedestrian zones and associated stormwater works.

6.1.5.3 New Squares – generally

- (1) *Any new public plaza is to*
- (a) be designed in a manners that minimises changes in level while meeting the existing level conditions at adjoining publicly accessible land;*
 - (b) be of high quality materials in accordance with the City's Public Domain Codes;*

- (c) *have the minimum number of signage and lighting structures to avoid visual clutter and minimise the use of bollards;*
- (d) *provide opportunities for casual outdoor dining.*

6.1.5.4 New Square – development of blocks 1 and 2

- (1) *For development of blocks 1 and 2 introduce a publicly accessible square near the centre of the street block in the location shown on Figure 6.7 Public domain plan.*
- (2) *The new square is to:*
 - (a) *have a minimum area of 1,300sqm as shown outlined in red on Figure 6.9 Public domain principles plan;*
 - (b) *be defined by development and the convergence of new and existing lanes and through-site pedestrian links;*
 - (c) *be visually activated with doors and windows fronting the square, creating views into circulation spaces and elevated gathering spaces; and*
 - (d) *integrate an interpretive element relating to the historical alignment of the Tank Stream on the eastern boundary of the square.*

6.1.5.5 New Squares – development of block 4

- (1) *Public plazas are to be provided as shown generally on Figure 6.7A Public domain plan Option B.*
- (2) *The combined area of the public plazas, outlined in red on Figure 6.9A Public Domain principles plan Option B, shall be a minimum of 1,800sqm.*
- (3) *The new public plaza to George Street, marked G on figure 6.9A Public Domain principles plan Option B, is to:*
 - (a) *have direct access from George Street;*
 - (b) *have a high level of solar access;*
 - (c) *be defined by George Street, new and existing lanes and through-site links, and fine grain development;*
 - (d) *contain public access stairs on the northern edge from the plaza to lane level;*
 - (e) *integrate a multi-level building at the eastern edge of the plaza for community and associated uses, access to below plaza level community uses, and an internal passenger lift to facilitate equitable access from George Street to the laneways and Pitt Street;*
 - (f) *be visually activated to the north and east by active edges (including potential balconies and roof terraces) creating views into circulation spaces and gathering spaces; and*
 - (g) *incorporate high quality public art.*
- (4) *The new public plaza at the Pitt Street level, marked P on figure 6.9A Public domain principles plan Option B is to:*
 - (a) *integrate laneways and plaza areas with existing and proposed ground floor uses; and*
 - (b) *integrate an interpretive element relating to the historical alignment of the Tank Stream on the eastern boundary of this plaza.*

6.1.5.6 Active Frontages

- (1) *For development of blocks 1,2 and 3, active frontages are to be provided in the locations nominated on the Active frontages map.*
- (2) *For development of block 4 and block 5, active frontages are to be provided in the locations nominated generally on Figure 6.12A Active frontages option B.*

6.1.5.7 Awnings

- (1) *Footpath awnings are to be provided in the locations nominated on the Footpath awnings and colonnades map.*
- (2) *For development of block 4, retractable canvas awnings are to be provided to internal laneways and squares.*

6.1.6 – Built Form and Design

Amend the text in this section as shown below with existing text shown in *italics*, new text shown as underlined and deleted text shown as ~~strikethrough~~.

6.1.6.1 Building Height

- (1) *Development must not exceed the maximum height in metres for the land as shown in Figure 6.10 Alternative heights for blocks 1, 2 and 3 and in Figure 6.10A Alternative heights for option B for block 4 and block 5.*
- (2) *Encourage a variety of built form options within development blocks 1, 2, 3, and 4 and 5. The site area of each development block may increase with the addition of one or more optional additions A, B, or C as indicated on Figure 6.11 APDG site development blocks 1, 2 and 3 and Figure 6.11A APDG site development blocks Option B.*

6.1.6.2 Street frontage heights and setbacks

- (1) *The street frontage height of a building is not to exceed the maximum height shown for land on Figure 6.13 Building frontage height for blocks 1, 2 and 3 and as shown on Figure 6.13A Building frontage height Option B for block 4 and block 5.*
- (2) *The maximum width of an elevation above the street frontage height of buildings, as shown in Figure 6.13, is to be 35% of the total height of the building, excluding curved facades where the change in tangent across the façade is greater than 60 degrees.*

Note: for example, a tower of 200m height may have a maximum elevation width above the street wall of 70m (200m x 35%).

- (3) *Ensure a minimum of 95% of each of the building frontages are built to the alignment of the public domain to the height shown on Figure 6.13 Street frontage height in metres for blocks 1, 2 and 3 and shown on Figure 6.13A Street frontage height in metres for Option B for block 4 and block 5.*
- (4) *Provide setbacks above the street-wall in accordance with Figure 6.14 Setbacks above the street frontage height for blocks 1, 2, and 3 and on Figure 6.14A Setbacks above the street frontage height Option B for block 4 and block 5.*
- (5) *The following minimum setbacks are required for tower forms:*
 - (a) *the north-western tower on block 1 – 0m to Alfred and George Streets and the new lane and 3m to southern boundary;*
 - (b) *the western tower – 4m to George Street at 188-194A George Street, increasing to 8m at the southern boundary of 196-208 George Street; 3m to the southern boundary and 4m to the eastern side;*

- (c) *the south-eastern tower on block 1 – 8m to all streets and lanes; ~~and~~*
- (d) *the eastern tower on block 4 – 6m to Pitt Street; 6m to tower building at 188-194A George Street; 6m to podium of approved building envelope for Tower B at 19-31 Pitt Street under development consent D/2015/1049; and variable to other streets and lanes; ~~and~~*

(e) the south-eastern tower on block 5:

- (i) Pitt Street – 6m at the northeast corner of the tower, transitioning to 4m at the southeast corner of the tower;
- (ii) Underwood Street – 3m at the western corner of the tower, stepping to 4m at the eastern corner of the tower; and
- (iii) Queens Court (future through-site link) – 1m above RL 47.7m as shown in figure 6.10A Alternative heights Option B.

- (6) *The minimum setback for a wall with openings is 3m from a shared boundary*

6.1.6.3 Building Design and Bulk

- (1) *Building envelopes are to be in accordance with Figure 6.10 Alternative heights for blocks 1, 2, and 3 and with Figure 6.10A Alternative heights Option B for block 4 and block 5.*
- (2) *Notwithstanding Figure 6.10 Alternative heights, a reduced building envelope for Block 1 may be permitted on the lot marked 'X' in Figure 6.13 Street frontage heights to allow for a larger central public square.*
- (3) *Introduce a slender tower in the north-west corner of site known as 1 Alfred Street, which fronts Circular Quay in accordance with Figure 6.10 Alternative heights.*
- (4) *For blocks 1 and 2 introduce two new commercial towers on the site, one in the south-east corner and the other on the western side fronting George Street as identified in Figure 6.10 Alternative heights for blocks 1 and 2.*
- (5) *For block 4 introduce a new commercial tower on the eastern side of block 4 as identified in Figure 6.10A Alternative heights Option B.*
- (5A) For block 5 introduce a new commercial tower on the eastern side of block 5 as identified in Figure 6.10A Alternative heights Option B.
- (6) *Design lower levels of the tower fronting Alfred Street to address the pedestrian scale environment at George Street and Herald Square.*
- (7) *For block 4, any building on PT 181 DP606865 (the site of Jacksons on George) shall have a maximum height of RL 16 at the southern boundary of the lot increasing in height to the north in accordance with the 21 June 12pm Sun Angle.*
- (8) *For block 4, the proposed community use building and the portion of the tower podium facing the new north-south lane shall be built to a maximum height of RL24.*
- (9) *The tower on block 4 shall be designed to mitigate wind impacts on Underwood and Pitt Streets including active systems, form and materials*
- (10) *New development must not cause ground level environment on the APDG site or surrounding streets and lanes to have a mean wind speed of Gust Equivalent Mean wind speed exceeding:*
 - (a) *10 metres per second for more than 5% of the year; or*
 - (b) *15 metres per second more than one per year.*

Developments are not to rely on physical barriers such as screenings or awnings

(11) For block 5, the new commercial tower shall include an allowance for façade articulation equivalent to 1% of the building envelope established in Figure 6.10A Alternative Heights Option B.

(13) Ground floor retail/commercial uses are to accommodate amenities, storage, general back of house activities and other spatial requirements to support these uses.

(14) Where retail space is provided ~~on the first floor and basement~~, generous double height spaces are to be provided to give visual connectivity to public spaces for activation.

(15) Open-plan office space is to be located on the lower levels of the podium that opens onto ~~the underside of the glazed awning on~~ the Queens Court through-site link to provide visual connectivity and interest.

(16) Future development applications are to be informed by consultation with Sydney Water, Heritage NSW and Sydney Metro infrastructure to minimise any impacts on the Tank Stream and the Sydney Metro corridor.

(17) Where the building is in close proximity to adjacent towers, the design is to include sufficient treatments to ensure privacy impacts are minimised.

6.1.6.4 Design Excellence Strategy for Development Block 4

(1) *The following competitive design processes must be completed before the lodgement of a Stage 2 development application for block 4:*

(a) *An invited architectural design competition for a building on the land shown as Area A on Figure 16.6A Design Excellence Option B;*

(b) *The preparation of design alternatives on a competitive basis for a building on the land shown as Area B on Figure 16.6A Design Excellence Option B.*

(2) *The section of architectural practices for each competition design process will be informed by individual design briefs to be developed in accordance with the following:*

(a) *A range of emerging and established architects will participate in competitive design processes to ensure architectural design variety within block 4.*

(b) *To ensure architectural design variety across block 4, no architectural practice may participate in more than one competitive design process.*

(c) *A minimum selection of 6 established architectural practices will be invited to participate in the architectural design competition for Area A.*

(d) *A section of 4 emerging architectural practices will be invited to participate in the competitive design process for Area B.*

(e) *To achieve a whole of site design excellence, the architectural design processes for the land shown as Area A and Area B on Figure 6.16A are to be run concurrently.*

(3) *For development on block 4 to be eligible for the maximum additional floor space bonus available under clause 6.21(7) of SLEP 2012, competitive design processes must be competed for both Area A and Area B on Figure 16.6A Design Excellence Option B.*

(4) *Having regard to the total area of block 4 for which competitive design processes are required, the amount of any additional bonus floor space available to development on block 4 under clause 6.21(7) of Sydney LEP 2012 will be as follows:*

- (a) *The amount attributable to a competitive design process for Area A is up to 77% of the maximum additional floor space available under clause 6.21(7);*
- (b) *The amount attributable to a competitive design process for Area B is up to 23% of the maximum additional floor space available under clause 6.21(7)*

6.1.6.4 Design Excellence Strategy for Development Block 5

- (1) The following competitive design processes must be completed before the lodgement of a detailed development application for block 5:
 - (a) An invited architectural design competition is to be undertaken in accordance with clause 6.21 of Sydney LEP 2012 for the entire block 5 site identified as block 5 in Figure 6.11A – APDG Site- Development blocks Option B.
 - (b) The invited architectural design competition is to involve no less than five architectural firms.
 - (c) Any additional floor space pursued for a building demonstrating design excellence under clauses **6.25 (3A)(d) and 6.21(7)(b)**, is to be accommodated within the building envelope shown in Figure 6.10A Alternative Heights Option B.
 - (e) No additional building height under clause 6.21(7)(a) is to be awarded as a result of the Competition.

6.1.7 – Parking and Vehicular Access

Amend the text in this section as shown below with existing text shown in *italics*, new text shown as underlined and deleted text shown as ~~strikethrough~~.

- (1) *Vehicle and service entry points are to be consistent with Figure 6.15 Vehicular access plan for blocks 1, 2 and 3 and Figure 6.15A Vehicular access plan Option B for block 4 and 5.*
- (2) *One way vehicular access provided from the new north-sound lane to George Street identified as 'A' and 'B' on Figure 6.15 Vehicular access plan for blocks 1, 2 and 3 is short term only.*
- (3) *Provide shared basement access between developments to minimise vehicular movements on lanes.*
- (4) *Loading docks are not permitted on George, Pitt or Alfred Streets or on the new public square frontage*
- (5) *Above ground parking is not permitted.*

6.3.X.X – Floodplain Management for Development Block 5

Amend the text in this section as shown below with existing text shown in *italics*, new text shown as underlined and deleted text shown as ~~strikethrough~~.

- (1) A site specific flood study consistent with section 3.7 of this DCP and City of Sydney's Interim Floodplain Management Policy is to be prepared and submitted with the Development Application.
- (2) Entry to the basement carpark is to be designed to prevent a 100 year flood event and include a crest of the basement carpark ramp to prevent a 20 year flood event at a minimum level of RL 4.15m.

6.3.X.X – Sustainability for Development Block 5

Amend the text in this section as shown below with existing text shown in *italics*, new text shown as underlined and deleted text shown as ~~strikethrough~~.

- (1) New commercial buildings should be designed to meet a 6 star Greenstar rating.
- (2) New commercial buildings should be designed to meet a 5.5 star NABERS Energy rating for base building of the commercial component, evidenced by the

provision of a NABERS Energy Commitment Agreement prior to the issuing of relevant Construction Certificate.

- (3) New commercial buildings should be designed to meet a 4 star NABERS Water score for the commercial component.
- (4) New commercial development should achieve net-zero carbon, zero waste and water efficient outcomes.

Figure 6.7A APDG Site – Public Domain Plan (Option B)

Replace Figure 6.7A as shown attached

Figure 6.8A APDG Site – Streets, Lanes and Through Site Links – Option B

Replace Figure 6.8A as shown attached – *Amendments are shown clouded*

Figure 6.9A APDG Site – Public Domain Principles Plan (Option B)

Replace Figure 6.9A as shown attached

Figure 6.10A APDG Site – Alternative Heights (Option B)

Replace Figure 6.10A as shown attached

Figure 6.11A APDG Site – Development Blocks (Option B)

Replace Figure 6.11A as shown attached

Figure 6.12A APDG Site – Active Frontages (Option B)

Replace Figure 6.12A as shown attached

Figure 6.13A APDG Site – Street frontages height in metres (Option B)

Replace Figure 6.13A as shown attached

Figure 6.14A APDG Site – Setback above street frontage height (Option B)

Replace Figure 6.14A as shown attached

Figure 6.15A APDG Site – Vehicular Access Plan (Option B)

Replace Figure 6.15A as shown attached

Figure 6.16A APDG Site – Design Excellence (Option B)

Replace Figure 6.7A as shown attached

Active Frontages Map

Replace sheet 14 and replace with new sheet 14 as shown attached.

Development Control Envelope – 55 Pitt Street

Inset new Figure – Development Control Envelope – 55 Pitt Street

Through site link and bridge height – 55 Pitt Street

Insert new Figure – Through site link and bridge height – 55 Pitt Street

– **Amendments shown clouded**

Figure 6.7

**APDG Site
- Public domain plan**

Legend

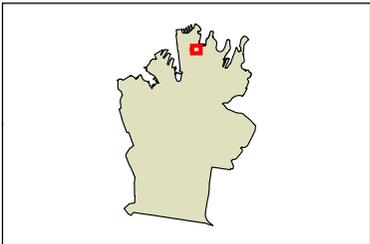
Public domain open to the sky and noted on property title

- Extension of Herald Square
- Lane - 6m wide minimum (types A & B).
Open to sky unless height is shown on plan.
- Optional extension of square
- Publicly accessible square

Public domain noted on property title

- Through-site link 4.5m-6m wide.
Height varies as shown on the plan as RLs.

96



0 30 m





Sydney Development Control Plan 2012

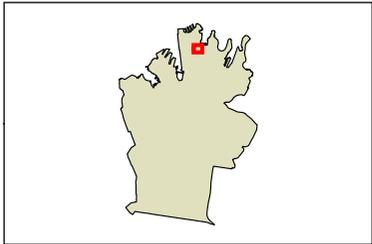
Figure 6.7A

APDG Site - Public domain plan (Option B)

Legend

- Extension of Herald Square
- Through-site link 4.5-6.0m wide
Height varies as shown on the plan as RL's
- Lane - 6m wide minimum
Open to sky unless height is shown on plan
- Publicly accessible square
- Optional extension of square
- Colonnade 3m wide

97



0 30 m

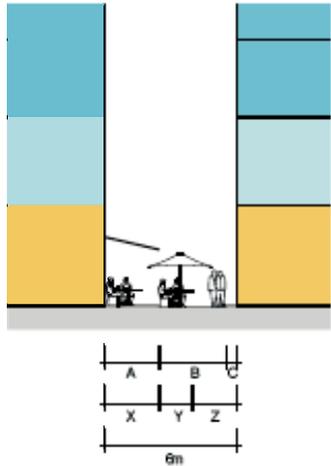
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Projection: MGA Zone 56
 Datum: GDA84
 Paper Size: A4
 Prepared By: SPUD
 Printing Date: 27 February, 2020



STREETS, LANES AND THROUGH SITE LINKS

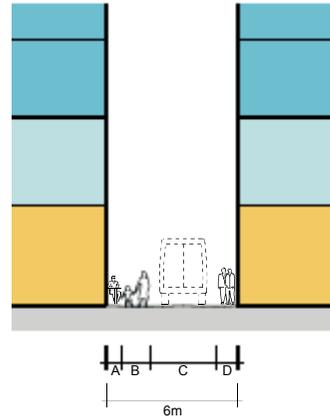
LANE TYPE A



KEY

- A Footpath with flush kerb 2.5m
- B Shared service road 3.0m
No vehicle access 8am-6pm M-F
- C Footpath with flush kerb 0.5m
8am-6pm M-F
- X Seating & retractable awning 2.5m
- Y Seating & umbrellas 1.5m
- Z Min. clearance for pedestrian traffic 2.0m

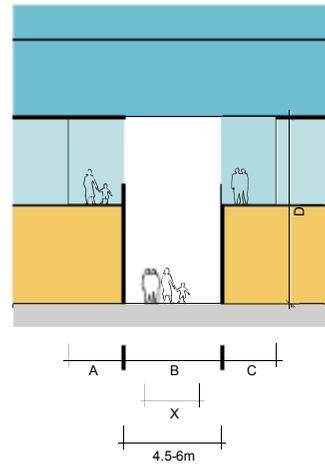
LANE TYPE B



KEY

- A Seating 0.5m
- B Footpath with flush kerb 0.5m
- C Shared service road 3.0m
No vehicle access 8am-6pm M-F
- D Footpath with flush kerb 1.0m

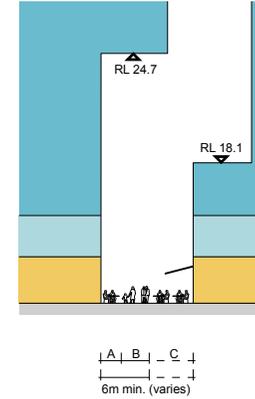
THROUGH SITE LINK



KEY

- A Gallery or balcony min. 1.5m
- B Through site link min. 4.5m
- C Gallery or balcony min. 1.5m
- D Minimum height 8m
- X Min. clearance for pedestrian traffic 2.0m

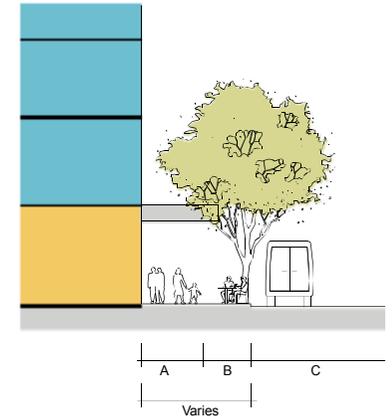
THROUGH SITE LINK A



KEY

- A Seating 2.0m
- B Min. clearance for pedestrian traffic 4.0m
- C Seating & retractable awning (varies)

TYPICAL STREET SECTION



KEY

- A Min. clearance for pedestrian traffic 2.0m
(3.5m preferred)
- B Seating 0.8m-2.5m including street furniture and trees 1.0m
- A Awning
- C Traffic Lanes

Generally

- All seats, tables and umbrellas in the public domain must be removable (consistent with the concept of "naked streets" including minimal signage).
- Laneway awnings must not have fixed elements or vertical screens.
- Other street furniture (eg. planters and temporary bollards) should not be permitted.
- Design of the public domain and lanes should prioritise pedestrian activities and provide an equitable clear path of travel, preferably adjacent to the building line.
- Integrated surface treatments may also be used to provide navigational assistance.
- TGSI and fixed barriers are not preferred.
- Seating areas should be in consistent locations throughout a lane.

KEY

- Active uses (consistent with SDCP 1996 Part 2.5.2)
- Small commercial tenancies <200sqm
- Commercial uses (Residential uses on 1 Alfred Street)

KEY

- Lanes (Types A & B)
- Through Site Links

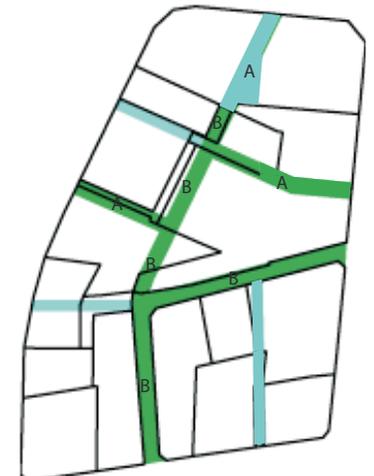
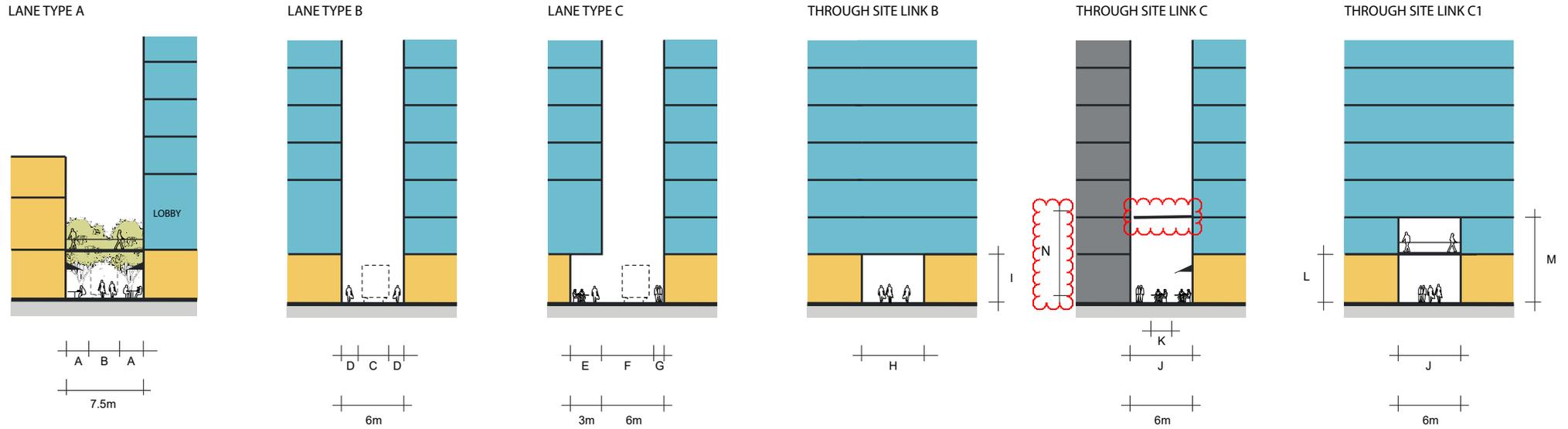


Figure 6.8A

STREETS, LANES AND THROUGH SITE LINKS - OPTION B



66

KEY

- Active Uses
- Commercial Uses
- Basement Access

- A Seating & retractable awning or umbrella 2.25m
- B Laneways. No vehicle access.
- C Shared service road 3m
- D Footpath with flush kerb 1.5m
- E Pedestrian setback 3m
- F Shared service road 5m. No vehicle access 8am-6pm Monday to Friday.
- G Footpath with flush kerb 1m

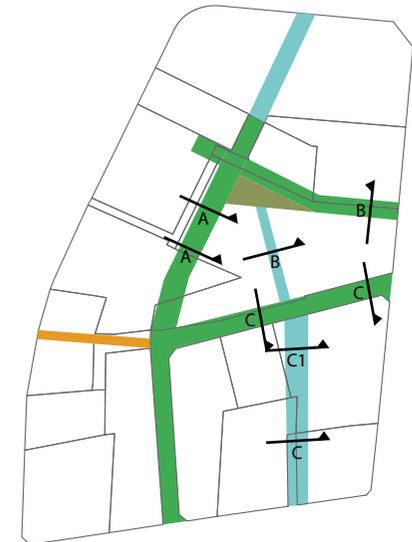
- H Through site link min. 4m
- I Minimum height 4m on variant
- J Through site link min. 6m
- K Minimum clearance for pedestrian traffic 2m
- L Bridge link height 5.5m
- M Minimum height 9.5m
- N Glazed awning min height 9.2m

Generally

- All seats, tables and umbrellas in the public domain must be removable (consistent with the concept of "naked streets" including minimal signage).
- Laneway awnings must not have fixed elements or vertical screens.
- Other street furniture (eg. planters and temporary bollards) should not be permitted.
- Design of the public domain and lanes should prioritise pedestrian activities and provide an equitable clear path of travel, preferably adjacent to the building line.
- Integrated surface treatments may also be used to provide navigational assistance.
- TGSi and fixed barriers are not preferred.
- Seating areas should be in consistent locations throughout a lane.

KEY

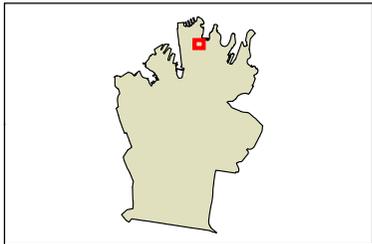
- Laneway
- Through-site link



APDG Site - Public domain principles plan

- Legend**
-  New square
 -  Publicly accessible square within block
 -  Lane
 -  Through-site link
 -  Connected laneway network

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Sydney Development Control Plan 2012

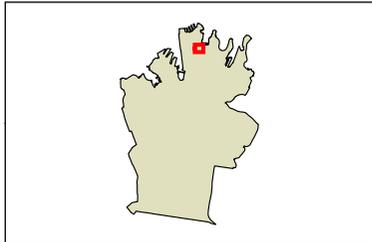
Figure 6.9A

APDG Site - Public domain principles plan (Option B)

Legend

-  Lane
-  Publicly accessible squares (G and P) within block
-  Through-site link
-  New squares
-  Connected laneway network
-  Optional extension of square
-  Indicative location of through site link

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Figure 6.10

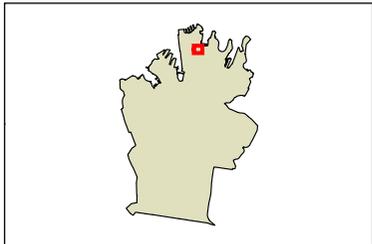
**APDG Site
- Alternative heights**

Legend

Height (in metres above ground)

- 15
- 25
- 45
- 55
- 75
- 126
- Tower - height noted on plan
* Max height determined
by Clause 6.20
of Sydney Local Environmental Plan 2012
- Align with property corners

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Sydney Development Control Plan 2012

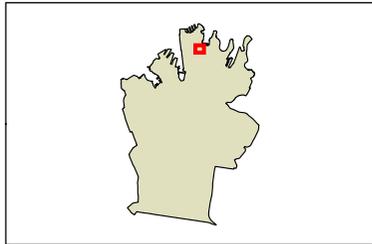
Figure 6.10A

APDG Site - Alternate heights (Option B)

Legend

- 9.5 to 17m above George Street *
 - 15m
 - 20m / RL 24.0 *
 - 25m
 - 45m
 - 55m
 - 75m
 - 126m
 - Tower - height noted on plan
- Maximum height determined by clause 6.25 of Sydney Local Environmental Plan 2012
- Align with property corners
 - * Refer to clause 6.1.6.3 of this DCP

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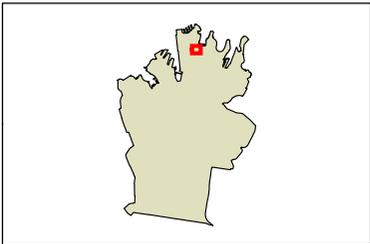
Figure 6.11

APDG Site - Development blocks

Legend

- Development Block 1
- Development Block 2
- Development Block 3
- Optional Additions to Development Block 1**
- Development Block A
- Development Block B
- Development Block C
- Optional Additions to Development Block 3**
- Development Block A
- Development Block B

104



0 30 m





Sydney Development Control Plan 2012

Figure 6.11A

APDG Site - Development blocks (Option B)

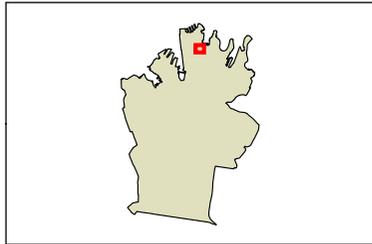
Legend

- Development Block 2
- Development Block 3
- Development Block 4
- Development Block 5

Optional Additions to Development Block 3 or Block 4

- Development Block A
- Development Block B

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**Sydney
Development
Control Plan 2012**

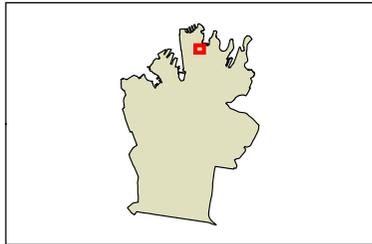
Figure 6.12A

**APDG Site
- Active frontages (Option B)**

Legend

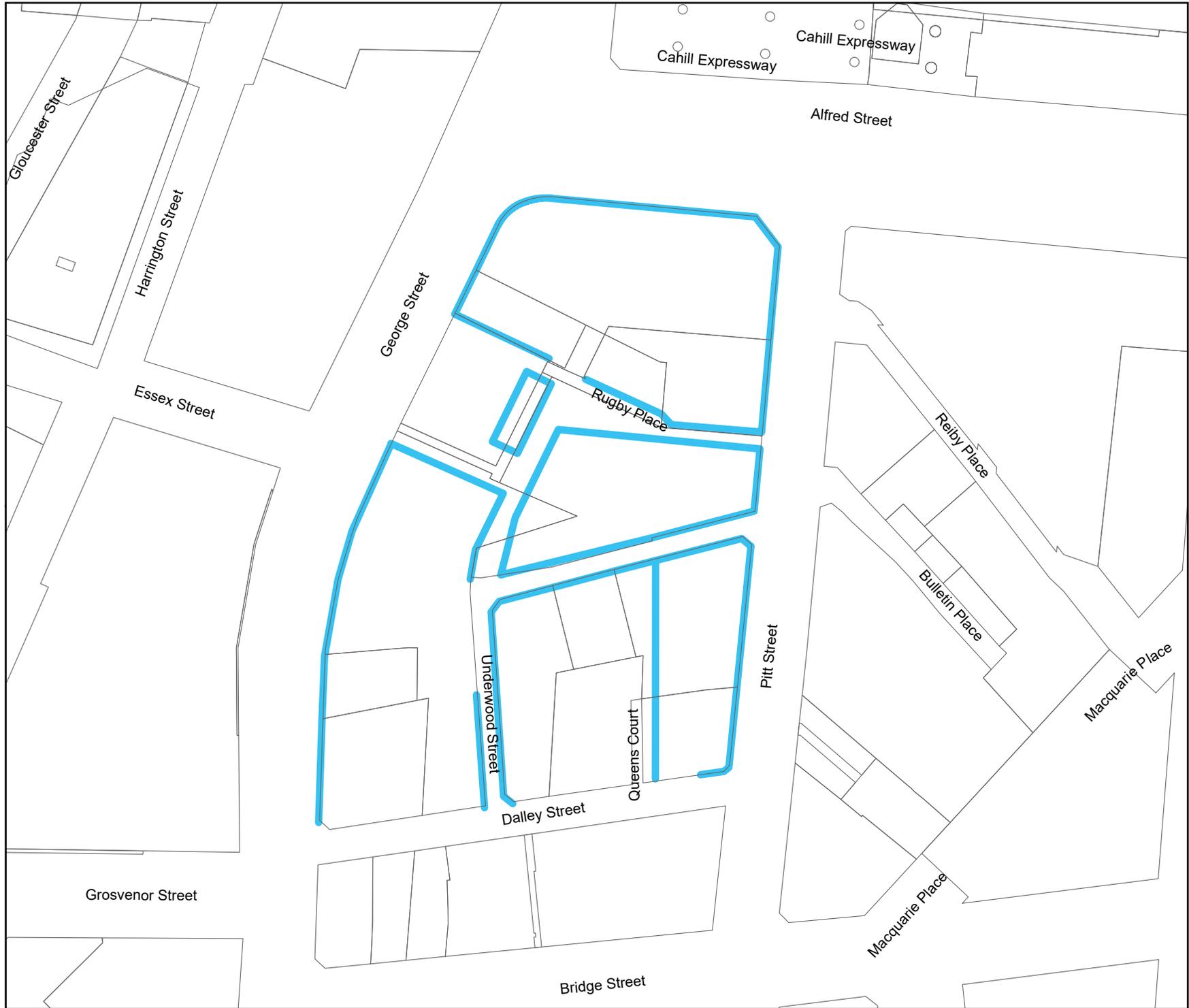
 Active frontages

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Sydney Development Control Plan 2012

Figure 6.13

APDG Site - Street frontage height in metres

Legend

Minimum / maximum height

20m / 25m

40m / 45m

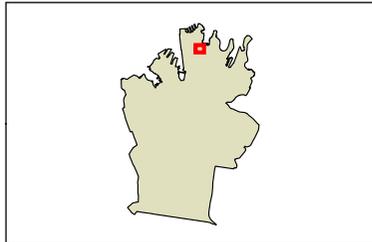
15m / 55m

70m / 185m

Public Space

x Refer to clause 6.1.6.3 of this DCP

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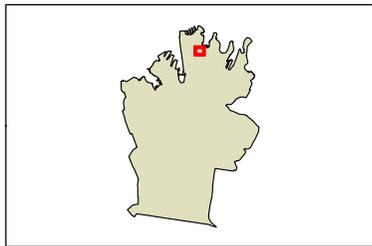
Figure 6.13A

APDG Site - Street frontage height in metres (Option B)

Legend

- 9m / 17m
- 20m / 25m
- 40m / 45m
- 15m / 55m
- 70m / 185m
- Publicly accessible spaces/streets/lanes

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Figure 6.14

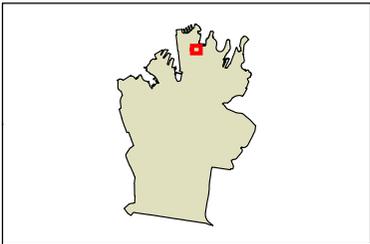
APDG Site - Setback above the street frontage height

Legend

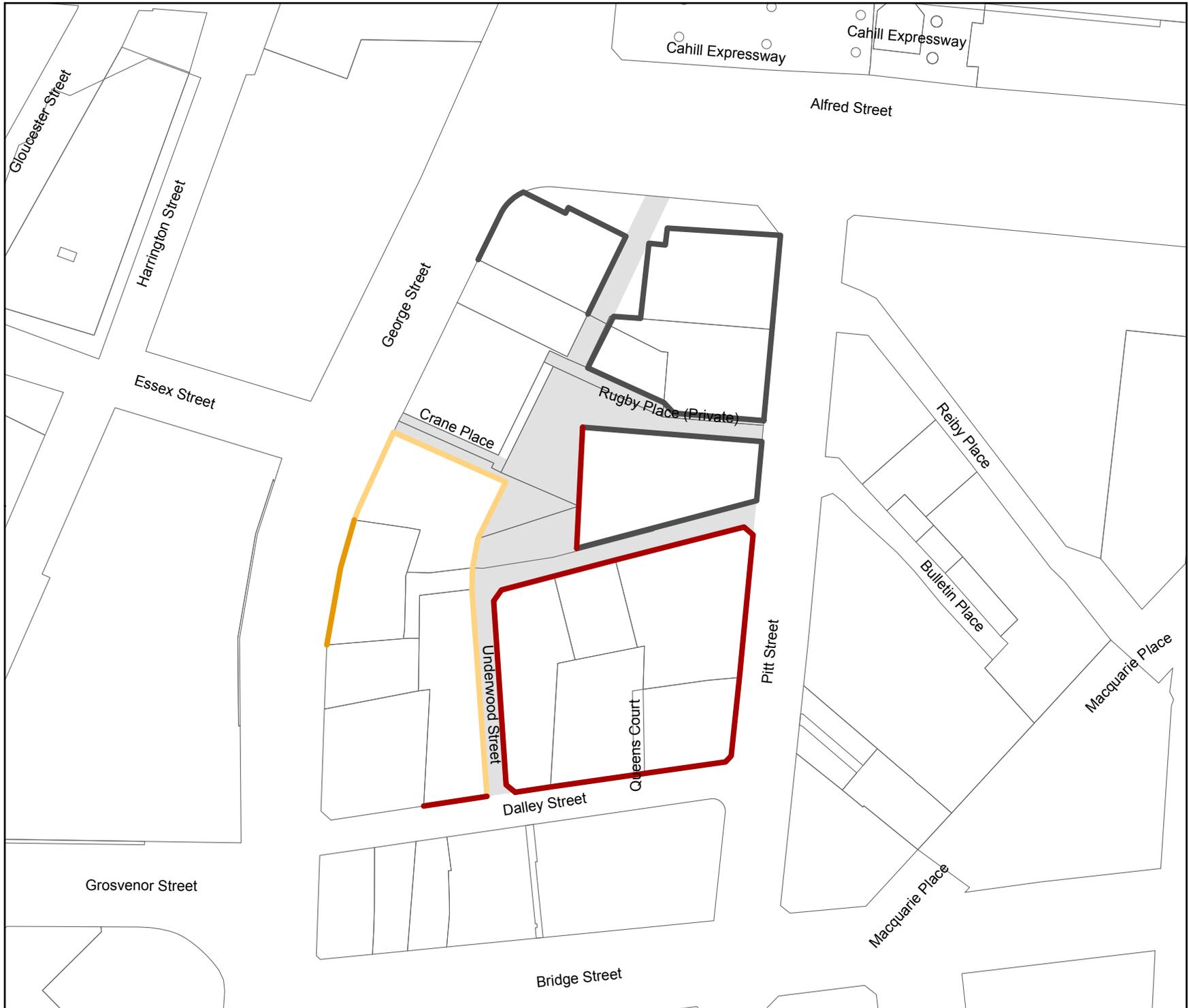
Minimum / maximum setbacks

-  0m
-  4m / 6m
-  Transition from 4m to 8m
-  8m / 10m
-  Publicly accessible spaces/streets/lanes

109



0 30 m





Sydney Development Control Plan 2012

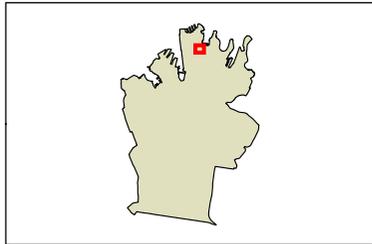
Figure 6.14A

APDG Site - Setback above the street frontage height (Option B)

Legend

- 0m
- 3m
- 3m to a height of RL 47.7m, and 1m above RL 47.7m
- 4m
- Transition from 6m to 4m
- 4m - 8m
- 6m
- Transition from 4m to 8m
- 8m - 10m
- Transition from 0m to 8m
- Publicly accessible spaces/streets/lanes

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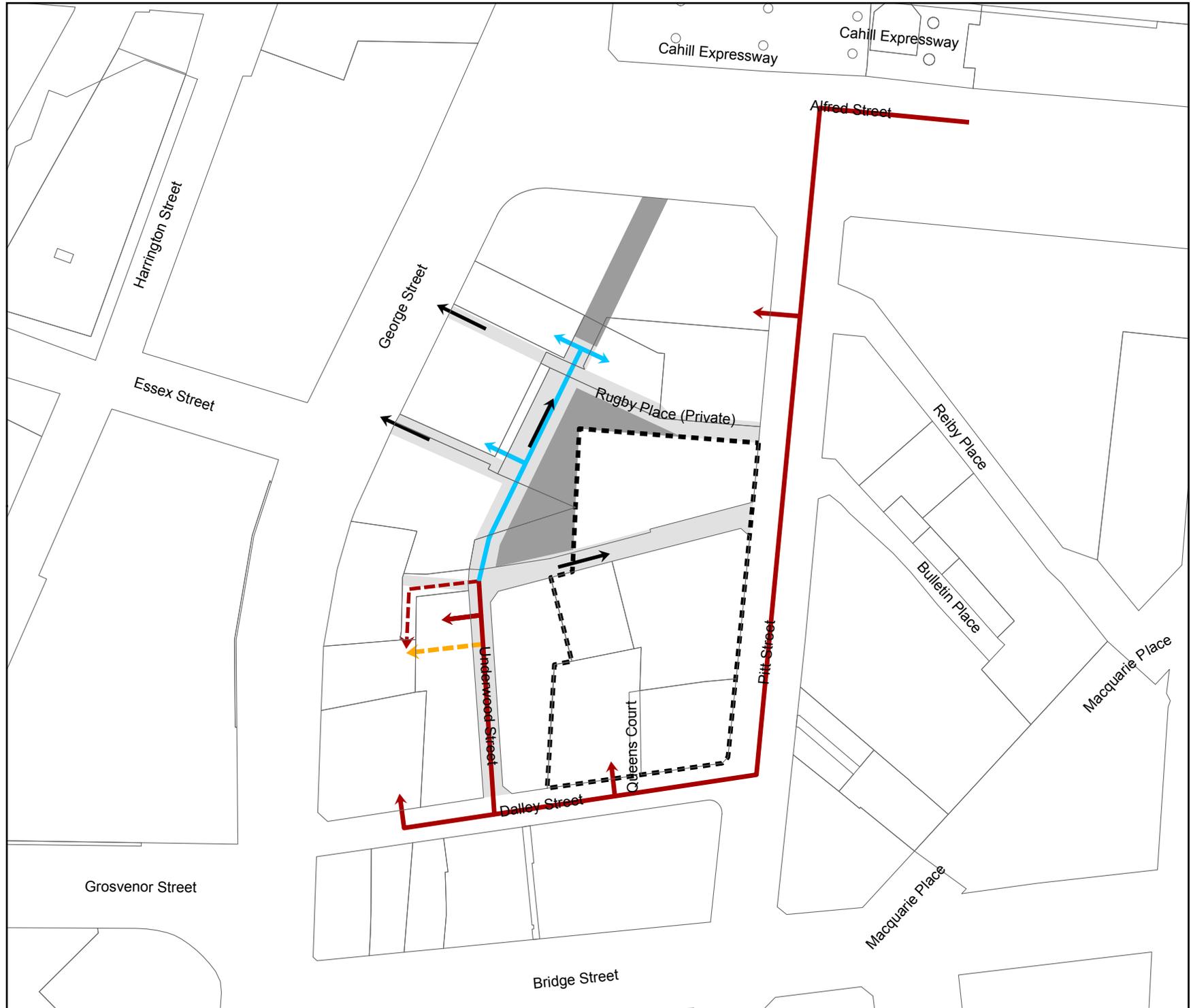
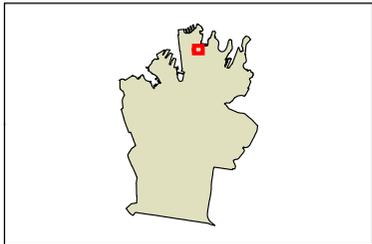


Figure 6.15

APDG Site - Vehicular access plan

Legend

-  Preferred vehicular access location
-  No vehicle access 8am-6pm mon-fri
-  Short term access location
-  Preferred long term access location
-  One way traffic circulation direction
-  No vehicular access
-  Publicly accessible space/streets/lanes
-  Shared basement/servicing





Sydney Development Control Plan 2012

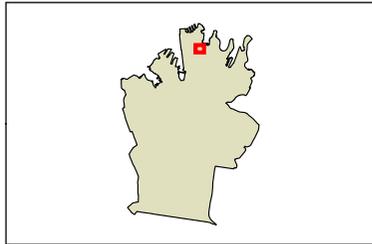
Figure 6.15A

APDG Site - Vehicular access plan (Option B)

Legend

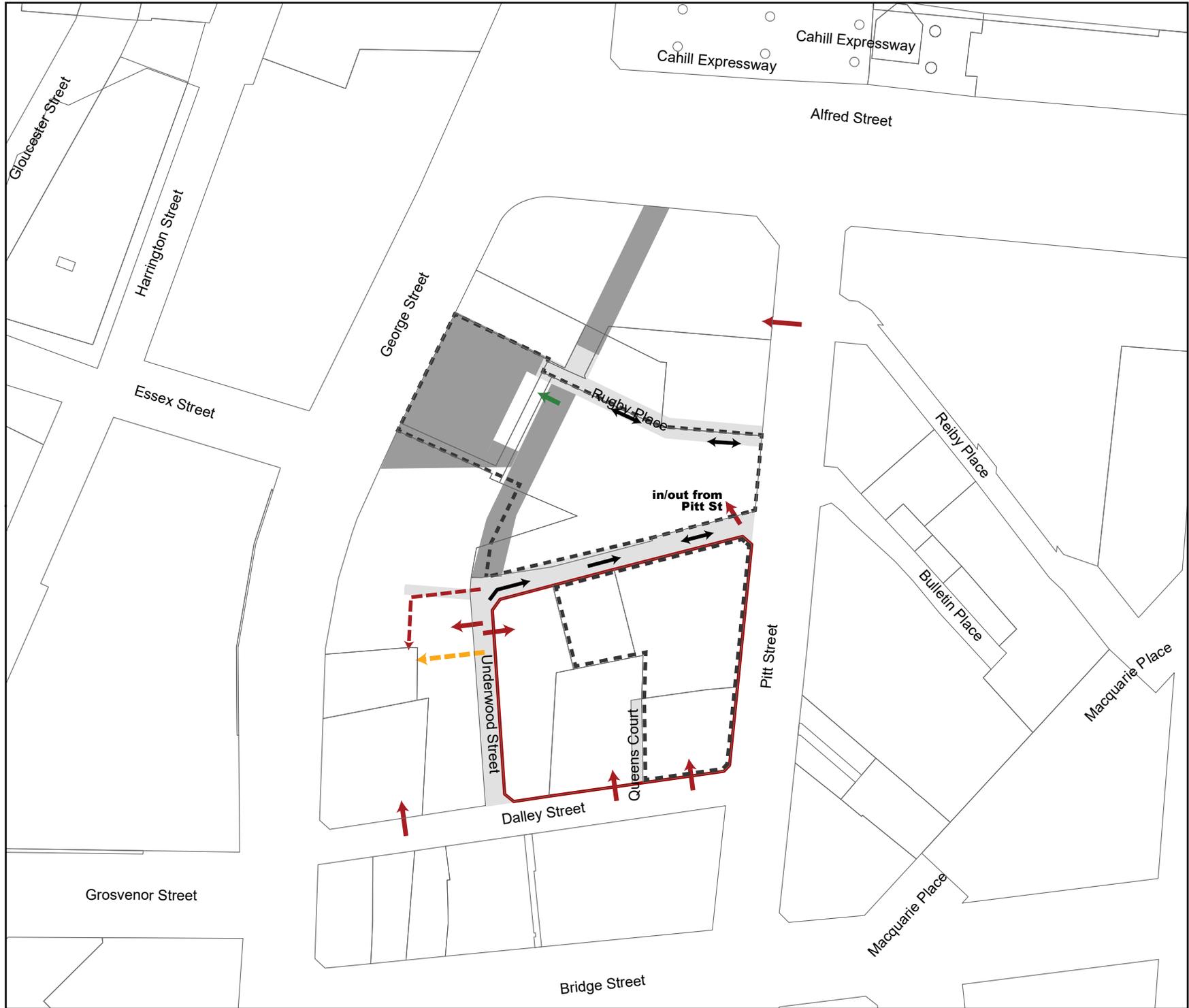
- Preferred vehicular access location
- No vehicle access 8am-6pm Monday to Friday
- Short term access location
- Preferred long term access location
- Access to end trip facility (bike hub)
- Traffic circulation direction
- No vehicular access
- Publicly accessible space/street/lanes
- Shared basement/servicing
- Land subject to a separate planning proposal

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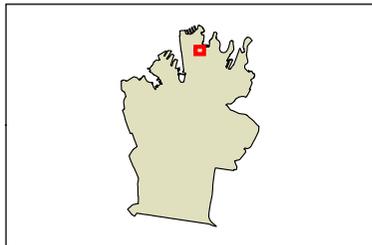
Figure 6.16A

APDG Site - Design Excellence (Option B)

Legend

- Area A
- Area B
- Area C

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0 30 m

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Figure 6.17
 Alfred Street site
 development control
 envelope (Kerry Hill
 Architects Scheme)

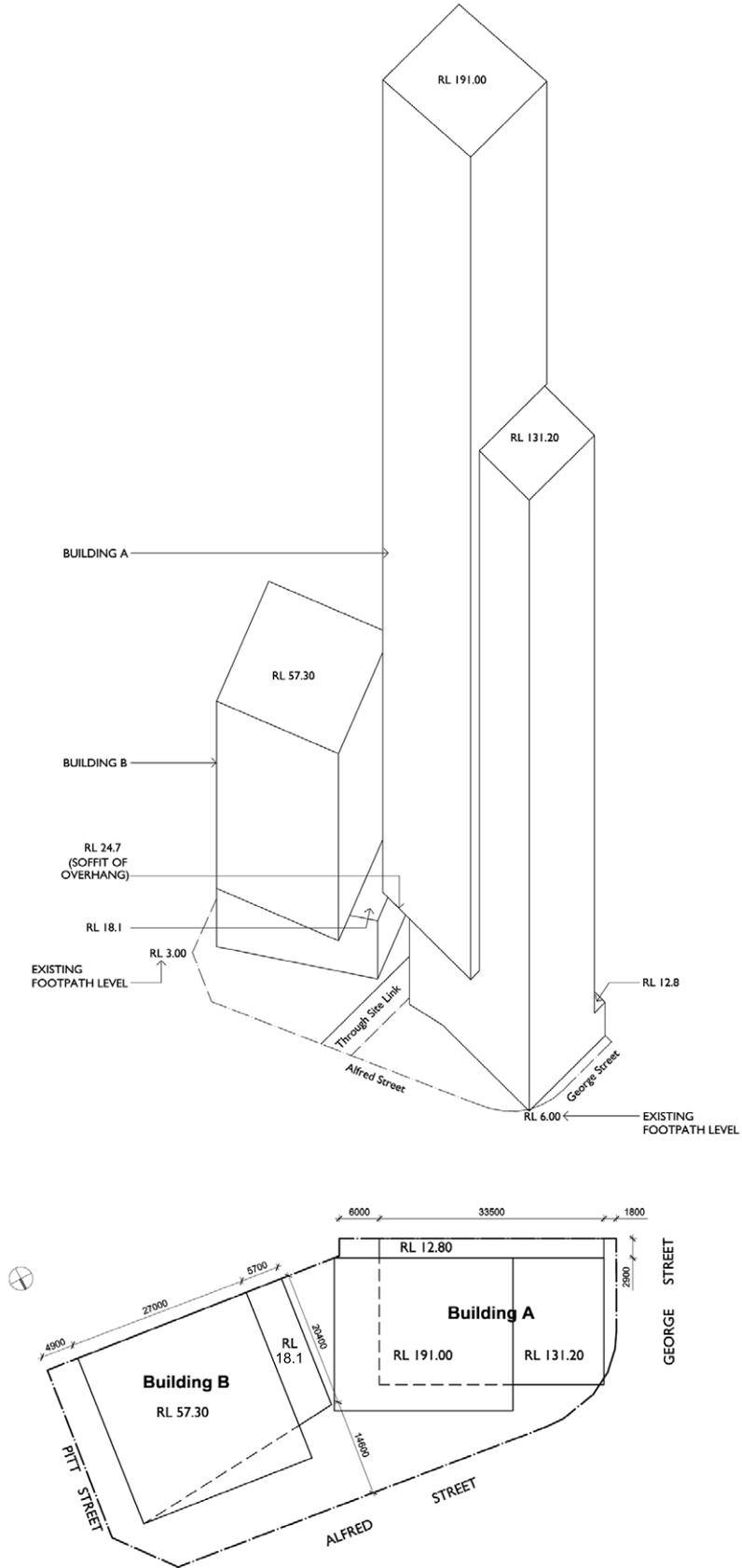


Figure 6.18a
North-west View
Development
Control Envelope
– 55 Pitt Street

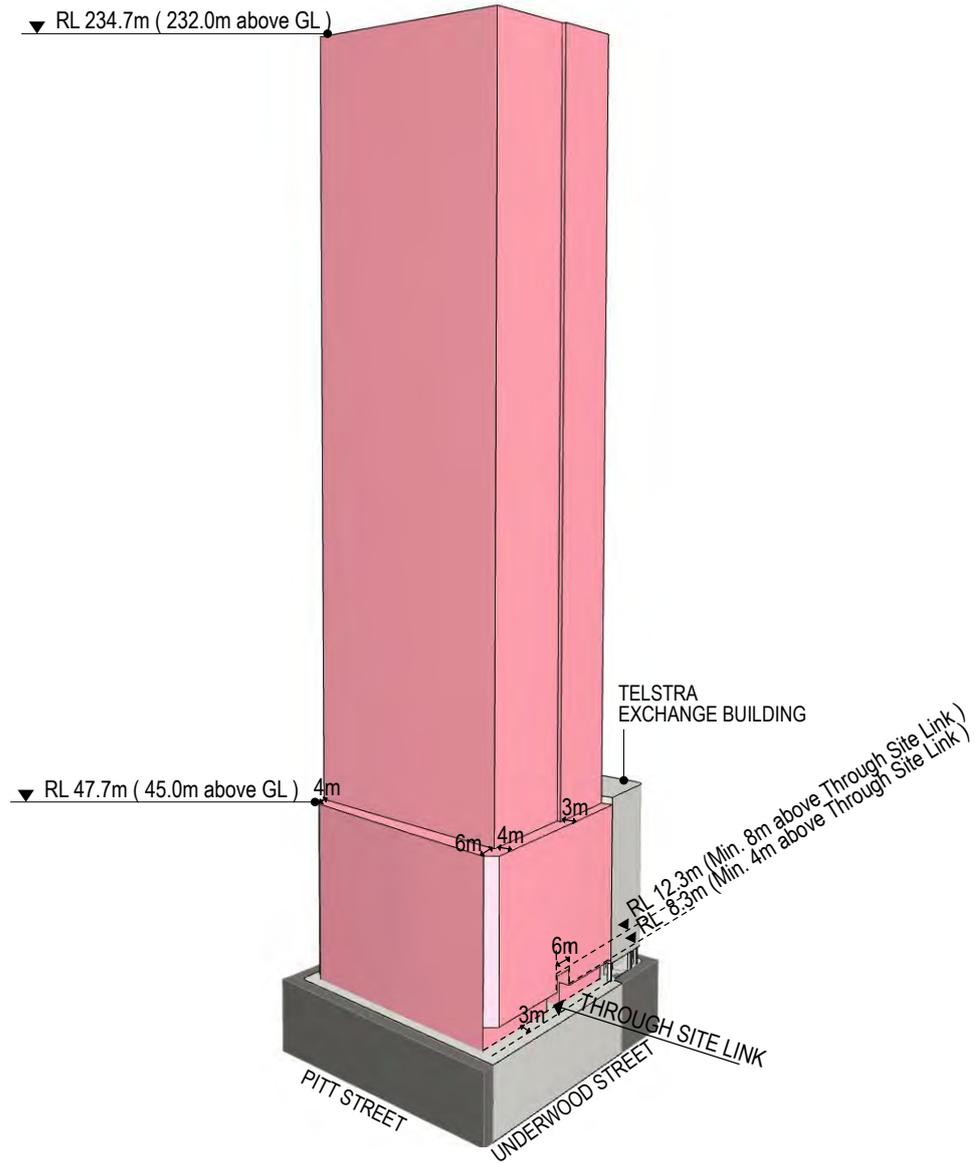


Figure 6.18b
 South-west View
 Development
 Control Envelope
 – 55 Pitt Street

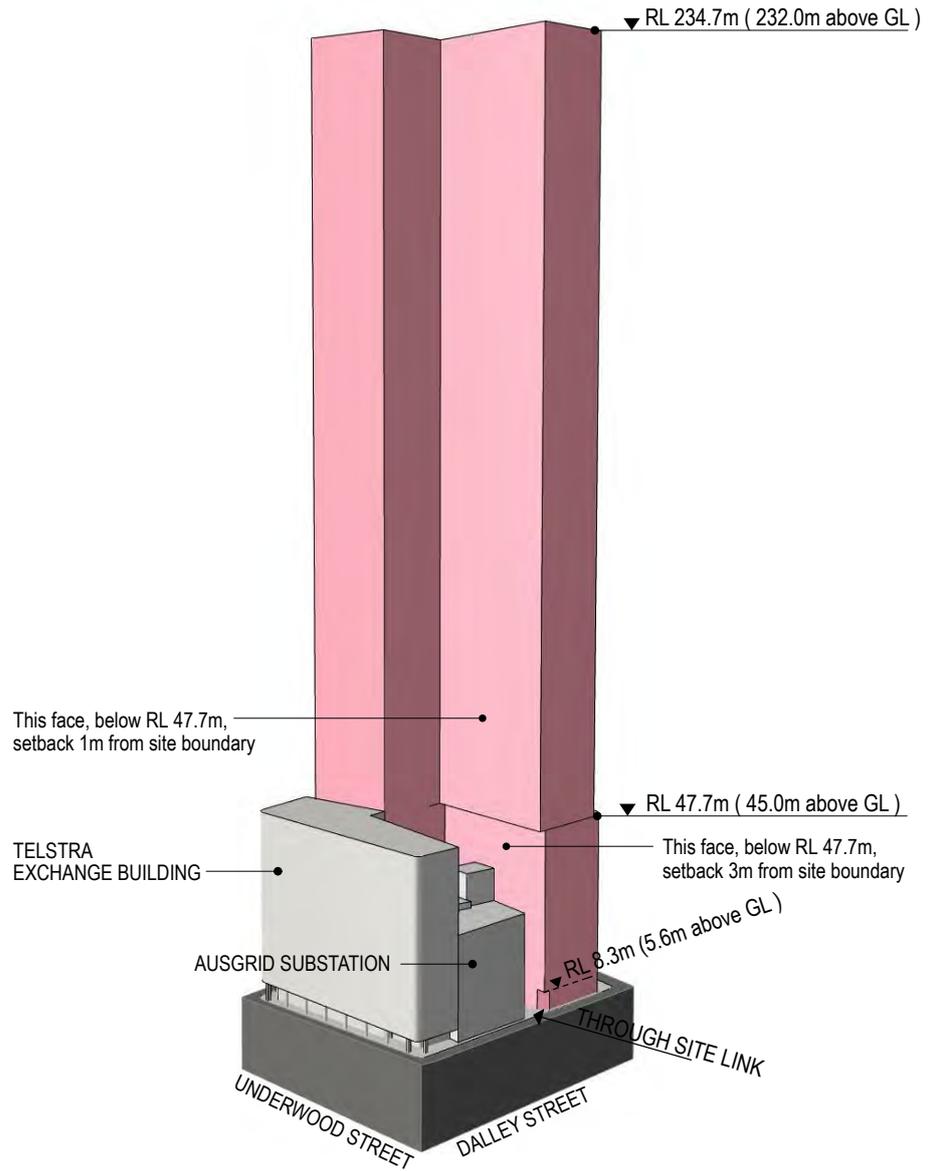
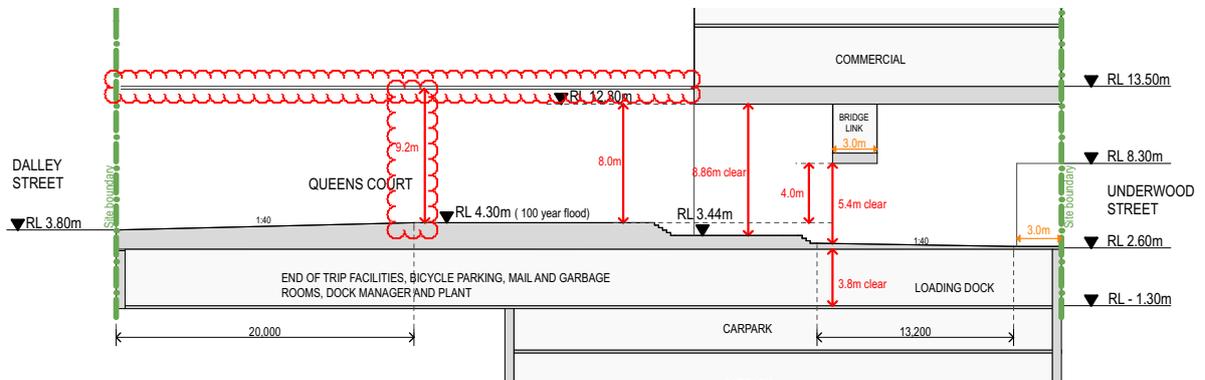


Figure 6.19
 Development Control Envelope – 55 Pitt Street





Attachment D

**Planning Agreement
55 Pitt Street, Sydney**

Planning Agreement

The Council of the City of Sydney

and

Mirvac Capital Pty Ltd as trustee for the Mirvac Pitt Street Trust ABN 19 326 659 400 and

Mirvac Commercial Sub SPV Pty Ltd as Trustee for Mirvac Pitt Street Trust No.2 ABN 14 958 651 710

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Annexures

A – Community Infrastructure Monetary Contribution

B – Affordable Housing Monetary Contribution

C – Instruments and Plan

D – Developer’s Works

E – Public easement and stratum plan

F – Blast Wall Contribution and Plans

G – Deed of Novation

H– Consent for access under section 138 of the Roads Act 1993

I – Restriction on Use – Telstra Land

J – Restriction on Use – Ausgrid Land

THIS PLANNING AGREEMENT is made on

2020

BETWEEN:

- (1) **The Council of the City of Sydney** ABN 22 636 550 790 of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **Mirvac Capital Limited as trustee for the Mirvac Pitt Street Trust** ABN 19 326 659 400 of Level 28, 200 George Street, SYDNEY NSW 2000; and
- (3) **Mirvac Commercial Sub SPV Pty Ltd as Trustee for Mirvac Pitt Street Trust No.2** ABN: 14 958 651 710 of Level 28, 200 George Street, SYDNEY NSW 2000,

(together referred to as the **Developer**).

BACKGROUND

- (A) The Developer is the owner of the Mirvac Land and intends to undertake the Development on the Land.
- (B) The proposed Development requires additional height and floor space required beyond that provided under the Sydney LEP.
- (C) Mirvac has lodged a planning proposal seeking to increase the maximum building height and prescribed Gross Floor Area.
- (D) The proposed development incorporates unutilised floor space from the Telstra Land and the Ausgrid Land with the support of Telstra and Ausgrid.
- (E) The owners of the Telstra Land and the Ausgrid Land have consented to a restrictive covenant to be registered on title of their respective lands limiting the future use of its Gross Floor Area.
- (F) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

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

Additional Public Art Contribution means a contribution of public art to be commissioned by the Developer for the Through Site Link in the event that the Blast Wall does not have to be built on the Land.

Adverse Affectation has the same meaning as in Part 3 of Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2010* (NSW).

Affordable Housing Monetary Contribution means that part of the Public Benefits described as "Affordable Housing Monetary Contribution" in clause 1 of

Schedule 3 to be paid by the Developer to the City in accordance with this document.

Attributed Value means the value the City and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in clause 1 of Schedule 3 of this document.

Ausgrid Land means that part of the Land known as 8-14 Dalley Street, Sydney legally described as Lot A and Lot B in DP 104160 (Auto Consol 4102-137).

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City Land means any land owned by or vested in the City including Queens Court.

City's Personal Information means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Developer).

City's Policies means all policies and procedures relevant to the provision of the Public Benefits, as notified by the City in writing to the Developer.

City's Representative means the person named in Item 3 of Schedule 1 or his/her delegate.

Commitment Agreement means a NABERS Energy Commitment Agreement signed by the Developer evidencing a commitment to design, build and commission the buildings on the Mirvac Land to achieve the NABERS energy rating set out in Schedule 3.

Community Infrastructure Monetary Contribution means that part of the Public Benefits described as "Community Infrastructure Monetary Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

Completion means the point at which the Developer's Works are complete except for minor defects:

- (a) the existence of which do not prevent the Developer's Works being reasonably capable of being used for their intended purpose;
- (b) which the Developer has grounds for not promptly rectifying; and

- (c) rectification of which will not affect the immediate and convenient use of the Developer's Works for their intended purpose.

Completion Notice means a notice issued by the Developer in accordance with clause 6.1.

Confidential Information means:

- (a) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Construction Certificate has the same meaning as in the Act.

Contamination has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

Corporations Act means the *Corporations Act 2001* (Cth).

CPI means the Consumer Price Index (All Groups) for the city of Sydney published by the Australian Bureau of Statistics (or any other index published in substitution for this index).

Dealing means selling, transferring, assigning, novating, mortgaging, charging, or encumbering and, where appearing, **Deal** has the same meaning.

Deed of Novation means the deed of novation in the form attached as Annexure G.

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Public Benefits or any other matter which prevents the Public Benefits from complying with the terms of this document.

Defects Liability Period means in relation to the Developer's Works listed at items 5(a),(b), (d), (e) and (f) of clause 1 in Schedule 3, the period of 12 months from the date on which the Developer's Works reach Completion.

Developer's Representative means the person named in Item 4 of Schedule 1 or his/her delegate.

Developer's Works means those parts of the Public Benefit described as "Developer's Works" in clause 1, Item 5 of Schedule 3, to be delivered by the Developer in accordance with this document.

Development means the development of the Land by the Developer described at Item 2 of Schedule 1.

Development Application means the development applications identified in Item 5 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Easement for Electricity Purposes means the easement for electricity purposes 9ft wide shown on dealing K953021.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011 (NSW)*;
- (b) the *Protection of the Environment Operations Act 1997 (NSW)*; and
- (c) the *Contaminated Land Management Act 1997 (NSW)*.

Environmental Performance Initiatives means those parts of the Public Benefit described as "Environmental Performance Initiatives" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Gross Floor Area has the meaning given to that term in the Sydney LEP in effect at the date of this document.

GST means the same as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Guarantee means an irrevocable unconditional bank guarantee or documentary performance bond for the Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, 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 having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the City.

Guarantee Amount(s) means a Guarantee or Guarantees for the total amount listed in Item 6 of Schedule 1 of this document.

Guarantee Amount(s) Due Date means the date or milestone by which the Developer must provide the Guarantee Amount to the City, set out at Item 7 of Schedule 1.

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;

- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Instruments means the instruments to be registered on the title of the Land with the same effect as those in Annexure C subject to any amendments agreed to by the City and if a glass awning is required over the Through Site Link, an easement for encroachment, support and overhang and positive covenant for maintenance.

Land means the land described in Item 1 of Schedule 1 of this document.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

LEP Amendment means an amendment to Sydney LEP that gives effect to the Planning Proposal when published on the NSW legislation website.

Mirvac Land means that portion of the Land owned by the Developer as described in Item 1 of Schedule 1 of this document.

Monetary Contribution means that part of the Public Benefits described as "Community Infrastructure Monetary Contribution and "Affordable Housing Monetary Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

NABERS means the National Australian Built Environment Rating System that measures the environmental performance of Australian buildings, tenancies and

homes and is managed nationally by the NSW Office of Environment and Heritage, on behalf of Commonwealth, State and Territory Governments.

Occupation Certificate has the same meaning as in the Act.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

Personnel means the Developer's officers, employees, agents, contractors or subcontractors.

Planning Proposal means the planning proposal lodged by or on behalf of the Developer on or about 19 December 2019 with the City.

Public Art Contribution means that part of the Public Benefits described as "Public Art Contribution" in clause 1 of Schedule 3 to be paid by the Developer in accordance with this document

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, principles, industry codes and policies relating to the handling of Personal Information.

Public Benefits means the provision of benefits to the community by the Developer in the form and at the times specified in Schedule 3.

Quantity Surveyor means a qualified independent and practising quantity surveyor with at least five years' experience in the assessment of building and construction costs.

Quantity Surveyor's Assessment means the assessment by the Quantity Surveyor of the cost to deliver the Developer's Works.

Queens Court means the land marked "Queens Court" in registered instrument DP 267949 being the land between Lot 1 in DP 513109 on the eastern boundary, Lot B in DP 104160 to the northern boundary, Lot A and B in DP 104160 on the western boundary and Dalley Street on the southern boundary.

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

Related Entity has the same meaning as under the *Corporations Act 2001* (NSW).

Restrictions means the restrictive covenants restricting the developable area of the Ausgrid Land and Telstra Land attached at Annexures I and J.

Standards means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 9 of Schedule 3.

Subdivision has the same meaning as in the Act.

Substation Building means the building on the Ausgrid Land that (as at the date of this agreement) is solely used as an electricity substation.

Sydney LEP means *Sydney Local Environmental Plan 2012*.

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Telstra Land means that part of the Land being Lot 1 in DP 787946, Folio Identifier 1/787946.

Through Site Link means the through site link shown in Annexure E

Transfer Land means land forming part of the Public Benefit that is to be either dedicated or transferred to the City in accordance with Schedule 3 of this document.

1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **including** means "including, without limitation".
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.

- (h) A reference to **this document** includes the agreement recorded by this document.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.
- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. **APPLICATION OF THE ACT AND THE REGULATION**

2.1 **Application of this document**

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

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

2.2 **Public Benefits to be made by Developer**

Clause 5 and Schedule 3 set out the details of the:

- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

2.3 **Application of sections 7.11, 7.12 and 7.24 of the Act**

- (a) The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in this document.
- (b) For the avoidance of doubt, if a condition of consent on a Development Consent for the Development is imposed under section 7.11 of the Act requiring payment of a contribution authorised by a contributions plan approved under section 61 of the *City of Sydney Act 1988 (NSW)*, no further contributions pursuant to section 7.11 or section 7.12 of the Act are payable in relation to the Development other than in accordance with clauses 2.3(c) and 2.3(d).
- (c) Where a Development Consent requires the payment of a monetary contribution in accordance with:
 - (i) section 61 of the *City of Sydney Act 1988 (City of Sydney Act)*, then this must be paid in accordance with the City of Sydney Act; or
 - (ii) section 7.12 of the Act, then the amount to be paid will be the amount payable in accordance with section 61 of the City of Sydney Act as it applied at the date of this agreement.
- (d) For the avoidance of doubt, the value of the monetary contribution is the same under either option in 2.3(c). The Developer will only be required to make payment to the City under 2.3(c)(i) or 2.3(c)(ii) above, but not both.

- (e) Following the release of this document in accordance with clause 9.3, then the statutory contributions at the time of determination of any future development application will apply.

2.4 **City rights**

This document does not impose an obligation on the City to:

- (a) grant Development Consent for the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

2.5 **Explanatory note**

The explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

3. **OPERATION OF THIS PLANNING AGREEMENT**

3.1 **Commencement**

This document will commence on the date of execution of this document by all parties to this document.

4. **WARRANTIES**

4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;

- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
- (e) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) **(no controller)** no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 **Developer warranties**

- (a) The Developer warrants to the City that, at the date of this document:
 - (i) it is the registered proprietor of the Mirvac Land;
 - (ii) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;
 - (iii) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Developer's size and experience;
 - (iv) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document and
 - (v) it has obtained the consent of the owners of the Ausgrid Land and the Telstra Land required to perform its obligations under this Agreement.
- (b) The Developer warrants to the City that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

5. **PUBLIC BENEFITS**

5.1 **Developer to provide Public Benefits**

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document.

5.2 **City assistance**

The City must assist the Developer in complying with its obligations by providing reasonable assistance to the Developer at the Developer's cost to enable the Instrument's and Restrictions' registration and by granting access to Queen's Court in accordance with the terms of the consent attached at Annexure H which is necessary for construction by the Developer of the Developer's Works.

6. **COMPLETION**

6.1 **Date of Completion**

The Developer must ensure that the Developer's Works reach Completion on or before the date or milestone referred to in clause 1 of Schedule 3 of this document.

6.2 **Developer completion notice**

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

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion;
- (b) copies of any warranties, guarantees, maintenance information or other material in the possession of the Developer reasonably required for the City to assume responsibility for the Developer's Works on land it owns or will own;
- (c) at least three sets of the "as built" drawings of the Developer's Works situated on City Land, including one set in electronic format; and
- (d) copies of any warranties, contractual arrangements, guarantees, insurance policies or other evidence that Developer's Works not on City Land will be adequately maintained during the Defects Liability Period.

(Completion Notice). For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Developer's Works, however the Developer must ensure that Completion is achieved for the Developer's Works before the due date specified in clause 1 of Schedule 3.

6.3 **Inspection by the City**

- (a) The City's Representative must inspect the Developer's Works situated on City Land or Transfer Land within 5 Business Days of the date that the Completion Notice is received by the City. The City's Representative may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 6.2. Within 10 Business Days of the date of the inspection by the City's Representative, the City must by written notice to the Developer:
 - (i) state that Completion has been achieved;
 - (ii) state that Completion has not been achieved and, if so, identify the Defects, errors or omissions which, in the opinion of the City's Representative, prevent Completion; or
 - (iii) issue a notice under clause 6.5(a).
- (b) Nothing in this clause 6.3, or any notice issued under this clause 6.3, will:
 - (i) reduce or waive in any manner the Developer's responsibility to:

- (A) deliver the Developer's Works in accordance with this document; or
- (B) the Developer's responsibility to correct Defects, errors or omissions, whether or not these are identified by the City; or
- (ii) create any liability for the City in relation to any defective aspect of the Developer's Works.
- (c) The parties agree that where a notice is issued by the City under clause (a)(ii), the provisions of clause 6.3(a) continue to apply until such time as the City issues a notice under clause (a)(i) or (a)(iii). If after two attempts by the Developer to obtain the City's concurrence under this clause, the City has not concurred that Completion has been achieved, then either party can refer the dispute to be resolved by adopting the procedures in clause 11.

6.4 **Date of Achieving Environmental Performance Initiatives**

- (a) The Developer must ensure that the Environmental Performance Initiatives are achieved on or before the date or milestone referred to in Item 7 of Schedule 3 to this document.
- (b) When, in the reasonable opinion of the Developer, the Environmental Performance Initiatives have been achieved, the Developer must notify the City's Representative in writing and must include in that notice:
 - (i) A copy of the executive summary of the Energy Efficient Review prepared by a NABERS certified Independent Design Reviewer in accordance with NABERS requirements;
 - (ii) A copy of 12 months of sub-metering data for energy and water that informed the NABERS rating; and
 - (iii) Evidence that the NABERS rating for energy and water has been achieved

(EPI Achievement Notice). For the avoidance of doubt, the Developer can issue separate EPI Achievement Notices at separate times for different elements of the Environmental Performance Initiatives, however the Developer must ensure that the Environmental Performance Initiatives are achieved before the due date specified in Item 7 of Schedule 3.
- (c) If the Environmental Performance Initiatives have not been achieved on or before the date or milestone referred to in item 7 of Schedule 3 to this document:
 - (i) the Developer must make a request by notice in writing to meet with the City to agree what alternative measures it will put into place in order to achieve a sustainable commercial development; or
 - (ii) if alternative measures have been previously agreed, the City may permit the Developer not to achieve the Environmental Performance Initiatives as set out in this document by issuing a notice in writing to the Developer stating that completion of the items identified in that

notice is not required to fulfil the Developer's obligations under this document.

6.5 **Non-completion of Public Benefits**

- (a) If the Developer makes a request by notice in writing not to complete the Public Benefits (or any part of the Public Benefits):
 - (i) the City may permit the Developer not to complete the Public Benefits (or any part of the Public Benefits) by issuing a notice in writing to the Developer stating that completion of the items identified in that notice is not required to fulfil the Developer's obligations under this document; and
 - (ii) the City may make a claim on the Guarantee in such amount as the City considers reasonably necessary to complete the portion of Public Benefit not being delivered by the Developer.
- (b) If the Developer fails to complete the whole of the Public Benefits in the form and to the standards required under the Development Consent or this document then the City may either:
 - (i) complete the Public Benefits itself, including by exercising its right to compulsorily acquire the Transfer Land in accordance with clause 10.6 of this document; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document,

and may recover all reasonable costs of and reasonably incidental to that work from the Developer, provided that works are to be performed as closely as possible in accordance with the scope of works set out in this document. The City can claim on the Guarantee in order to exercise this right, in which case the provisions of clause 10 will apply. To the extent that the City's costs exceed the amount of the Guarantee, the City can recover this amount from the Developer as a debt due and owing to the City.
- (c) If the City exercises its rights under this clause 6.4 to complete the Public Benefits, the Developer grants the City a licence for the period necessary for the City to access the Land to carry out, or procure the carrying out, of the Public Benefits.

7. **INDEMNITY**

The Developer indemnifies the City against all damage, expense, loss or liability of any nature suffered or incurred by the City arising from any act or omission by the Developer (or any Personnel) in connection with the performance of the Developer's obligations under this document, except where the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).

8. DEFECTS LIABILITY

8.1 Security for Defects Liability Period

Until the expiry of the relevant Defects Liability Period, the City may retain from the Guarantee an amount equal to 10% of the Attributed Value of the Developer's Works situated on City Land or Transfer Land as security for the Developer's performance of its obligations under this clause 8. The Developer must make any necessary arrangements to allow the provision of the Guarantee for the Defects Liability Period in accordance with this clause.

8.2 Defect in the Public Benefits

- (a) If:
- (i) the Developer is in breach of clause 4.2 of this document; or
 - (ii) the City notifies the Developer of a Defect in the Public Benefits within the Defects Liability Period,
- then, following written notice from the City, the Developer must promptly correct or replace (at the Developer's expense) the defective elements of the Public Benefits.
- (b) If the Developer is unable or unwilling to comply with clause 8.2(a), or fails to rectify the Defect within three months of receiving notice from the City under clause 8.2(a) and no Dispute Notice has been issued, the City may:
- (i) rectify the Defect itself;
 - (ii) make a claim on the Guarantee in accordance with clause 10 for the reasonable costs of the City in rectifying the Defect; and
 - (iii) to the extent the costs incurred to rectify the Defect exceeds the Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the City.
- (c) If the City requires access to the Land (besides Queens Court) to rectify any Defect, the Developer grants the City and its contractors a licence for such period as is necessary for the City and its contractors to access the Land to carry out, or procure the carrying out, of the rectification works.

9. REGISTRATION AND CAVEAT

9.1 Registration of this document

- (a) The Developer:
- (i) consents to the registration of this document at the NSW Land Registry Services on the certificate of title to the Mirvac Land;
 - (ii) warrants that it has obtained all consents to the registration of this document on the certificate of title to the Mirvac Land and to procure consent to register this document on the Telstra Land and Ausgrid Land ; and

- (iii) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the certificate of title to the Mirvac Land, including but not limited to:
 - (A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services;
 - (B) providing the production slip number when the Developer produces the certificate of title to the Mirvac Land at the NSW Land Registry Services; and
 - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
- (iv) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

9.2 **Caveat**

- (a) The City may, at any time after the date of this document, register a caveat over the Land preventing any dealing with the Land that is inconsistent with this document. Provided that the City complies with this clause 9.2, the Developer must not object to the registration of this caveat and may not attempt to have the caveat removed from the certificate of title to the Land.
- (b) In exercising its rights under this clause 9.2 the City must do all things reasonably required to:
 - (i) remove the caveat from the Land or a part of the Land once this document has been registered on the certificate of title to the Land or the relevant part of the Land; and
 - (ii) consent to the registration of:
 - (A) this document; and
 - (B) any plan of consolidation or plan of subdivision; or
 - (C) any dealing required by this document or the Development Consent;
 - (D) any other dealing where there has been compliance (if required) with this document,
 - (E) the transfer of any part of the Mirvac Land to a Related Entity of the Developer or a trust fund of which a related body corporate of the Developer is a trustee, manager or responsible entity; and
 - (F) the transfer of any part but not the whole of the Mirvac Land to another entity.

9.3 Release of this document

- (a) Once the Developer has provided all Public Benefits in respect of the Ausgrid Land or the Telstra Land in accordance with this document and the Restrictions have been registered on title of the Ausgrid Land and the Telstra Land, then the City must promptly do all things reasonably required to remove this document and/or any caveat from the certificate of title of that Land.
- (b) This document and any caveat (if this document is not registered) will remain on the title of the Mirvac Land until all the Public Benefits listed at Schedule 3 have been delivered.

10. ENFORCEMENT

10.1 Developer to provide Guarantee

The Developer must deliver the Guarantee for the Guarantee Amount to the City by the Guarantee Amount Due Date.

10.2 Adjustment of Guarantee Amount

- (a) On each anniversary of the date of the Guarantee (the "Adjustment Date"), the Guarantee Amounts are to be adjusted to a revised amount by applying the following formula:

$$\mathbf{RGA} = \mathbf{GA} \times (\mathbf{A/B})$$

where:

RGA is the revised guarantee amount applicable from the relevant Adjustment Date

GA is the Guarantee Amount that is current on the relevant Adjustment Date

A is the Index Number most recently published before the relevant Adjustment Date

B is the Index Number most recently published:

- (i) before the date of the Guarantee for the first Adjustment Date; and
 - (ii) before the preceding Adjustment Date for every subsequent Adjustment Date
- (b) If after the formula is applied the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.
 - (c) The City must give the Developer written notice of the revised Guarantee Amounts to apply from the relevant Adjustment Date.
 - (d) The Developer must give the City replacement or further Guarantees so that the City holds Guarantees for an amount equal to the revised guarantee amounts no later than 20 Business Days after receipt of a notice given under clause 10.2(c).

10.3 Right of City to claim on Guarantee

- (a) The Developer agrees that the City may make an appropriation from the Guarantee in such amount as the City, acting reasonably, thinks appropriate if:
- (i) the Developer fails to comply with clause 5.2 of Schedule 3 of this document (provision of detailed design drawings and detailed costs estimate);
 - (ii) the Developer fails to comply with clause 2 of Schedule 3 (payment of Monetary Contribution);
 - (iii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.5(a)(ii);
 - (iv) an Insolvency Event occurs in respect of the Developer;
 - (v) the Developer fails to deliver the Public Benefits in accordance with clause 6.5(b);
 - (vi) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document;
 - (vii) the detailed designs for the Developer's Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;
 - (viii) the Developer's Works situated on the City Land or Transfer Land do not reach Completion within 62 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed by the City in writing); or
 - (ix) the City incurs any other expense or liability in exercising its rights and powers under this document.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.2 must be applied only towards:
- (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document; and
 - (ii) carrying out any works required to achieve the Public Benefits.

10.4 Expenditure by the City

If the City claims on the Guarantee to Complete the Developer's Works situated on the City's Land or Transfer Land, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or

- (b) may expend more than the Guarantee Amount. If the City expends more than the Guarantee Amount to complete the Developer's Works then the reasonable amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer.

10.5 **Top-up and return of Guarantee**

- (a) If the City calls upon the Guarantee in accordance with this clause 10 then the Developer must immediately provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with paragraph (b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.

- (b) If:

- (i) the monies secured by the Guarantee have not been expended;
- (ii) the City has concurred with Completion in accordance with clause 6.3(a)(i) of this document, taking into account any approved non-completion of Public Benefits approved by clause 6.5(a) of this document; and
- (iii) the City has been provided with the security for the Defects Liability Period in accordance with clause 8.1,

then the City will promptly return the Guarantee to the Developer following the issue of a notice pursuant to clause 6.3(a)(i) of this document.

- (c) If, following expiry of the Defects Liability Period, the City is satisfied that all defects have been rectified in accordance with clause 8 then the City must promptly return to the Developer the portion of the Guarantee retained by the City as security for the Defects Liability Period.

10.6 **Compulsory acquisition**

If the Developer fails to transfer or dedicate the Transfer Land to the City in accordance with Schedule 3 of this document then the City may compulsorily acquire that land for the amount of \$1.00 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*. The City and the Developer agree that:

- (a) this clause 10.6 is an agreement between the Developer and the City for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*;
- (b) in this clause 10.6 the Developer and the City have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and
- (c) the Developer must pay the City, promptly on demand, an amount equivalent to all costs incurred by the City in acquiring the whole or any part of the Transfer Land as contemplated by this clause 10.6.

11. **DISPUTE RESOLUTION**

11.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 11.

11.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the City's Representative for resolution. The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 11; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.
- (b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the City's Representative must meet at least once and use their best endeavours to resolve the Dispute.
- (c) If the Dispute has not been resolved following 11.2(b), senior management of the parties must meet at least once in the following 10 Business Days and use their best endeavours to resolve the Dispute including by using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed.
- (d) The parties may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.

11.3 **Not use information**

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 11 is to attempt to settle the Dispute. Neither

party may use any information or documents obtained through any dispute resolution process undertaken under this clause 11 for any purpose other than in an attempt to settle the Dispute.

11.4 **Condition precedent to litigation**

Subject to clause 11.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

11.5 **Summary or urgent relief**

Nothing in this clause 11 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

12. **TAXES AND GST**

12.1 **Responsibility for Taxes**

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 12.1(a).

12.2 **GST free supply**

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

12.3 **Supply subject to GST**

To the extent that clause 12.2 does not apply to a supply made under this document, this clause 12.3 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.

- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 12.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 12.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 12.3.
- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

13. **DEALINGS**

13.1 **Dealing by the City**

- (a) The City may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency. The City must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

13.2 **Dealing by the Developer**

- (a) Prior to registration of this document in accordance with clause 9, the Developer must not Deal with this document or the Mirvac Land without the City, the Developer and the third party the subject of the Dealing entering properly executing counterparts of the Deed of Novation and delivering those counterparts of the Deed of Novation to the City prior to or simultaneously with a transfer being signed in respect of the Mirvac Land.
- (b) On and from registration of this document in accordance with clause 9:
 - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole or part of the Mirvac Land (without subdivision) to a purchaser of the Land and provided the party the subject of the Dealing enters into a Deed of Novation and delivers a properly executed copy of the Deed of Novation to the City;

- (ii) the Developer may register a plan of strata subdivision on the Mirvac Land, and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan on the Mirvac Land; and
 - (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Mirvac Land without the prior written consent of the City
- and the City, the Developer and the third party the subject of the Dealing entering into Deed of Novation and delivering a properly executed copy of the Deed of Novation to the City
- (c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.
 - (d) Upon delivery of a Deed of Novation to the City pursuant to clause 13.2(a) the City must promptly, and in any event no later than 20 Business Days after receipt by the City of the Deed of Novation:
 - (i) provide the Developer with a letter of consent by the City as caveator to the registration of the transfer transferring title to the Mirvac Land to the purchaser named as the incoming party under the Deed of Novation; and
 - (ii) provide the Developer and the third party the subject of the Dealing with counterparts of the Deed of Novation properly executed by the City.

13.3 **Extinguishment or creation of interests on Transfer Land**

- (a) Prior to the dedication or transfer of the Transfer Land to the City, the Developer must:
 - (i) extinguish all leases and licences over the Transfer Land; and
 - (ii) use its best endeavours to extinguish all redundant encumbrances and those that, in the City's opinion acting reasonably, would unreasonably impede the intended use of all or any part of the Transfer Land.
- (b) For the purpose of clause 13.3(a)(ii) the parties agree that the Easement for Electricity Purposes is not required to be extinguished from the Transfer Land prior to dedication or transfer to the City.
- (c) The Developer must comply with any reasonable directions by the City relating to the Transfer Land, including but not limited to the creation of any encumbrances over the Transfer Land.

14. **TERMINATION**

- (a) The City may terminate this document by notice in writing if the amended Sydney LEP is:

- (i) subsequently amended by an environmental planning instrument made after the Planning Proposal in a way that prevents the Development from proceeding; or
 - (ii) declared to be invalid by a Court of competent jurisdiction.
- (b) If this document is terminated then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss the each party may suffer as a result of the termination of this document;
 - (iii) the City will return the Guarantee to the Developer after first deducting any amounts owing to the City or costs incurred by the City by operation of this document. If in exercising its rights under this document the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer; and
 - (iv) the City will, at the Developer's cost, do all things reasonably required to remove this document or a caveat from the certificate of title to the Land.

15. **LIMITATION OF LIABILITY – MIRVAC CAPITAL PTY LIMITED**

- (a) In this clause 15:

Claim includes a claim, demand, remedy, suit, injury, damage, Loss, Cost, liability, action, proceeding or right of action.

Cost means a cost, charge, expense, outgoing, payment, fee or other expenditure of any nature.

Loss means any loss (including loss of profit and loss of expected profit), Claim, action, liability, proceeding, summons, demand, notice, damage, death, personal injury, suit, judgment, injunction, order, decree, Cost, charge, expense, outgoing, payment, diminution in value or deficiency of any kind or character which a party pays, suffers or incurs or is liable for including:

- (i) liabilities on account of taxes;
- (ii) interest and other amounts to third parties;
- (iii) legal (on a full indemnity basis) and other expenses reasonably incurred in connection with investigating or defending any Claim or action, whether or not resulting from any liability;
- (iv) amounts paid in settlement of any Claim or action; and
- (v) consequential loss and damage (irrespective of its nature or occurrence).

Trust means the Mirvac Pitt Street Trust constituted by the Trust Deed.

Trust Deed means the trust deed establishing the Mirvac Pitt Street Trust, as amended from time to time.

- (b) Mirvac Capital Pty Limited enters into this document only in its capacity as trustee of the Trust constituted under the Trust Deed and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against Mirvac Capital Pty Limited only to the extent to which it can be and is in fact satisfied out of property of the Trust from which Mirvac Capital Pty Limited is actually indemnified for the liability. This limitation of Mirvac Capital Pty Limited's liability applies despite any other provision of this document and extends to all liabilities and obligations of Mirvac Capital Pty Limited in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (c) No party to this document may sue Mirvac Capital Pty Limited in any capacity other than as the trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to Mirvac Capital Pty Limited or proving in any liquidation, administration or arrangement of or affecting Mirvac Capital Pty Limited (except in relation to property of the Trust).
- (d) The provisions of this clause 15 shall not apply to any obligation or liability of Mirvac Capital Pty Limited to the extent that it is not satisfied because, under the Trust Deed or by operation of law, there is a reduction in the extent of Mirvac Capital Pty Limited's indemnification out of the assets of the Trust as a result of Mirvac Capital Pty Limited's failure to properly perform its duties as trustee of the Trust.
- (e) Nothing in clause 15(d) shall make Mirvac Capital Pty Limited liable to any Claim for an amount greater than the amount which the relevant other party to this document would have been able to Claim and recover from the assets of the Trust in relation to the relevant liability if Mirvac Capital Pty Limited's right of indemnification out of the assets of the Trust had not been prejudiced by failure to properly perform its duties.
- (f) Mirvac Capital Pty Limited is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in clauses 15(b) to 15(e).
- (g) Despite any other provision of this document, a party to this document:
 - (i) must not make any claim and has no recourse against any of the past, present or future, direct or indirect, shareholders, partners, members, managers, principals, directors, officers, agents, affiliates (other than Mirvac Capital Pty Ltd in its capacity as limited under clause 15) or representatives of Mirvac Capital Pty Ltd or any of the foregoing (the **Mirvac Non-Recourse Parties**), or any of their respective assets (other than Mirvac Capital Pty Ltd's rights, property and undertaking

which are the subject of the Trust of whatever kind and wherever situated and whether present or future) for breach of contract, or for breach of any representation or warranty, on the part of Mirvac Capital Pty Ltd under this document; and

- (ii) releases each of the Mirvac Non-Recourse Parties from liability in respect of such a breach.

16. **LIMITATION OF LIABILITY – MIRVAC COMMERCIAL SUB SPV PTY LTD**

- (a) In this clause 16:

Trust means the Mirvac Pitt Street Trust No. 2 constituted by the Trust Deed.

Trust Deed means the trust deed establishing the Pitt Street Trust No. 2, as amended from time to time.

- (b) Subject to clause 16(e), Mirvac Commercial Sub SPV Pty Ltd enters into this document only in its capacity as trustee of the Trust constituted under the Trust Deed and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against Mirvac Commercial Sub SPV Pty Ltd only to the extent to which it can be satisfied out of property of the Trust from which Mirvac Commercial Sub SPV Pty Ltd is entitled to be indemnified for the liability. This limitation of Mirvac Commercial Sub SPV Pty Ltd's liability applies despite any other provision of this document and extends to all liabilities and obligations of Mirvac Commercial Sub SPV Pty Ltd in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (c) Subject to clause 16(e), no party may sue Mirvac Commercial Sub SPV Pty Ltd under or in respect of this document in any capacity other than as the trustee of the Trust, including the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to Mirvac Commercial Sub SPV Pty Ltd or prove in any liquidation, administration or arrangement of or affecting Mirvac Commercial Sub SPV Pty Ltd (except in relation to property of the Trust).
- (d) Mirvac Commercial Sub SPV Pty Ltd does not have to incur any obligation under this document unless its liability in respect of that obligation is limited in the same manner as in this clause 16.
- (e) The provisions of this clause 16 do not apply to any obligation or liability of Mirvac Commercial Sub SPV Pty Ltd to the extent to which there is, in respect of that obligation or liability, whether under the Trust or by operation of law:
 - (i) a reduction in the extent of Mirvac Commercial Sub SPV Pty Ltd's indemnification as a result of Mirvac Commercial Sub SPV Pty Ltd's failure to properly perform its duties as trustee of the Trust;

- (ii) loss of Mirvac Commercial Sub SPV Pty Ltd's right of indemnification as a result of Mirvac Commercial Sub SPV Pty Ltd's failure to properly perform its duties as trustee of the Trust; or
 - (iii) any failure by Mirvac Commercial Sub SPV Pty Ltd to exercise its right of indemnity out of the assets of the Trust.
- (f) Mirvac Commercial Sub SPV Pty Ltd is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in clauses 16(b) to (e)
- (g) Despite any other provision of this document, a party to this document:
- (iii) must not make any claim and has no recourse against any of the past, present or future, direct or indirect, shareholders, partners, members, managers, principals, directors, officers, agents, affiliates (other than Mirvac Commercial Sub SPV Pty Ltd in its capacity as limited under clause 16.16) or representatives of Mirvac Commercial Sub SPV Pty Ltd or any of the foregoing (the **Mirvac Non-Recourse Parties**), or any of their respective assets (other than Mirvac Commercial Sub SPV Pty Ltd's rights, property and undertaking which are the subject of the Trust of whatever kind and wherever situated and whether present or future) for breach of contract, or for breach of any representation or warranty, on the part of Merlin Australia Sub Pty Ltd under this document; and
 - (iv) releases each of the Mirvac Non-Recourse Parties from liability in respect of such a breach.

17. **CONFIDENTIALITY AND DISCLOSURES**

17.1 **Use and disclosure of Confidential Information**

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 17.2 or 17.3.

17.2 **Disclosures to personnel and advisers**

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information

under this document and obtains an undertaking from the person to comply with those obligations.

- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 17.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 17.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 17.2(b)(i).

17.3 Disclosures required by law

- (a) Subject to clause 17.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 17.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

17.4 Receiving party's return or destruction of documents

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

17.5 **Security and control**

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

17.6 **Media releases**

The Developer must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits without the City's prior written consent except where the information, publications, documents or articles are:

- (a) published internally within the Developer's organisation or to its related entities or amongst co-owners or prospective co-owners of the Land;
- (b) published for the purposes of advertising for leasing purposes;
- (c) published externally for fire safety, emergency or environmental protection reasons; or
- (d) published externally in order to comply with the Developer's reporting, publication and disclosure obligations imposed on it by law.

18. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing and signed and either left at the addressee's address or sent to the addressee by mail or emailed. If it is hand delivered, it is taken to have been given on the date of delivery. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received on the date when the sending party's email has been successfully transmitted.
- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

19. **GENERAL**

19.1 **Governing law**

- (a) This document is governed by the laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

19.2 Access to information

In accordance with section 121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Developer agrees to allow the City immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;
- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

19.3 Liability for expenses

- (a) The Developer must pay its own and the City's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulations and for any consent the City is required to provide under this document.

19.4 Relationship of parties

- (a) Nothing in this document 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.

19.5 Giving effect to this document

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

19.6 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 document,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 5pm on the specified day, it is taken to have been done on the following Business Day.

19.7 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 document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

19.8 Preservation of existing rights

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

19.9 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 document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

19.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

19.11 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

19.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

19.13 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

19.14 No fetter

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

19.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	<p>Mirvac Land:</p> <p>Lot 1 DP 513109 Lot 7 DP 110046 Lot 4 DP 524306 Lot 6 DP 75338 Lots 1 and 2 DP 1112308 Lots 2 and 3 DP 1092 Lot 501 DP 714847, together known as 37-57 Pitt Street and 6-8 Underwood Street, , Sydney</p> <p>Ausgrid Land:</p> <p>Lot A and B 104160 together known as 8-14 Dalley Street, Sydney</p> <p>Telstra Land:</p> <p>Lot 1 DP 787946 known as 6 Dalley Street, Sydney</p> <p>Queens Court</p>
2.	Development	<p>Development of a proposed new tower on the Land (but primarily on the Mirvac Land) up to a maximum height of RL 234.7m as contemplated in the Planning Proposal encompassing adjacent Telstra Land and Ausgrid Land but excluding site preparation and demolition works.</p> <p>The maximum total Gross Floor Area of the Development on the Land is 70,721 square metres.</p>
3.	City's Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Fax number: +612 9265 9518</p> <p>e-mail: gjahn@cityofsydney.nsw.gov.au</p>
4.	Developer's Representative	<p>Name: Company Secretary and Tom Waters</p> <p>Address: Level 28, 200 George Street, Sydney NSW 2000</p>

		Email: tom.waters@mirvac.com
5.	Development Application	Means any development application submitted to the City in connection with the Development.
6.	Guarantee Amount	<p>The total cost of the following Public Benefits listed in Schedule 3:</p> <ol style="list-style-type: none"> 1. Public Art Contribution in item 3; 2. Developer's Works that occur on the City's Land in item 5(a); 3. Developer's Works that occur on the future City Land in item 5(b); 4. The Developer's Works that occur on the City Land in items 5(d) and 5(e) (if applicable); and 5. the Additional Public Art in item 5(f) (if applicable).
7.	Guarantee Amount Due Date	Prior to the issue of the first Construction Certificate for the Development that relies on the LEP Amendment except where the Construction Certificate is in respect of site preparation and demolition only or relies on a Development Consent that approves demolition but no substantive construction works for the tower contemplated in the Development.

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</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) No</p>
2.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	Item 1 of Schedule 1.
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p>	The Development as described in clause 2.1.
4.	<p>The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p>	Schedule 3.
5.	<p>Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)</p>	<p>Sections 7.11 and 7.12 are not excluded to the extent set out in clause 2.3.</p> <p>Section 7.24 not excluded</p>

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
6.	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	The application of section 7.11 of the Act is not excluded to the extent set out in clause 2.3.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 11
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 10
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 9
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Yes – payment to the City of Community Infrastructure Monetary Contribution and Affordable Housing Monetary Contribution (Schedule 3) and submission of Guarantee to secure the Developer’s Works (Schedule 1).
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Completion of the Developer’s Works in items 5 (a)-(d) in clause 1 of Schedule 3.
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	As per Schedule 3, completion of the Developer’s Works items 5 (a)-(e) in clause 1 of Schedule 3, transfer of Transfer Land to the City, registration of the Instruments relating to Mirvac Land and achievement of the Environmental Performance Initiatives except for the NABERS Operation Rating.
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)	Clause 2.5

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS - OVERVIEW

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in the table below

	Public Benefit	Attributed Value	Due date	Additional specifications
1.	Community Infrastructure Monetary Contribution	\$12,988,080	On or before the issue of the first Construction Certificate for the Development on the Mirvac Land.	Refer Annexure A
2.	Affordable Housing Monetary Contribution	Affordable Housing Monetary Contribution Formula in Annexure B	On or before the issue of the first Construction Certificate for the Development	Refer to Annexure B
3.	Public Art Contribution	\$750,000	On or before the issue of the final Occupation Certificate for the Development.	Developer to provide evidence of invoices demonstrating spend of at least \$750,000 on public art consultation or commissioning.
4.	Transfer Land	Nil/ sqm.	After Completion but before the issue of the first Occupation Certificate for the Development on the Mirvac Land.	The strip of land occupying the site frontages of 6-8 Underwood Street and 37-49 Pitt Street along the east-west section of Underwood Street, nominally 3 metres wide but extending from the alignment of Underwood Street (at the western end of the Transfer Land) to the face of the building erected upon Lot 1 at ground level, and limited in stratum to between the top of the ground floor structural substrate level and the underside of colonnade

				soffit level of level 1 . Plans showing the indicative location of the Transfer Land are contained in Annexure E to this document.
5.	Developer's Works	<p>To be determined by a suitably qualified Quantity Surveyor agreed between the parties except for items e and f</p> <p>e. As set out in Annexure "F"</p>	<p>Items (a), (c)-(d): Prior to issue of the first Occupation Certificate for the Development on the Mirvac Land.</p> <p>Item (b) prior to issue of the first Occupation Certificate for the Development on the Mirvac Land and before the issue of the subdivision certificate for the Transfer Land, whichever is the earlier.</p> <p>Items (e) and (f): On or before the issue of the final Occupation Certificate for the Development.</p>	<p>a. Construction of a thru site link generally in the location of the existing Queen's Court laneway extending from Dalley Street through to Underwood Street as generally shown in Annexure D,</p> <p>b. Pedestrian footpath widening to 3m and improvement works along the full length of Underwood Street immediately adjacent to 55 Pitt Street development as per the plan at Annexure D.</p> <p>c. Improvements to finishes and colonnade on Telstra Land as shown in Annexure D.</p> <p>d. Blast Wall to be provided in accordance with Annexure F (if required).</p> <p>e. If Blast Wall is required, Blast Wall public art to be provided in accordance with Annexure F.</p> <p>f. In the event that the Blast Wall</p>

		f. \$300,000		and Blast Wall public art are not required the Developer will provide a site specific Through Site Link Public Artwork known as the Additional Public Art Contribution to the value specified in Column 3 being \$300,000.
6.	Instruments		Timing for registration to be in accordance with clause 3 of Schedule 3 below.	Refer to Annexure C
7.	Environmental performance Initiative	\$NIL	Prior to issue of the first Occupation Certificate for the Development on the Mirvac Land except for the NABERS Operation Rating which is to be issued 18 months after issue of the final Occupation Certificate or 12 months after the Development on the Mirvac Land reaches a 75% tenancy load, whichever is the later.	In respect of the Development on the Mirvac Land: -A minimum 6-star Office Green Star V1.3 Design and Construct rating -A minimum 5.5 star rating on operation under the NABERS energy scheme - A minimum 4-star rating in operation under the NABERS water scheme.

2. PAYMENT OF MONETARY CONTRIBUTION

2.1 Payment

The Developer must pay the Monetary Contribution to the City in cash or by unendorsed bank cheque.

2.2 **Indexation**

If the Monetary Contribution is not paid to the City on the date of this document, then at the date of payment the Monetary Contribution must be indexed in accordance with the formulas set out in Annexures A and B of this document.

2.3 **No trust**

Nothing in this document creates any form of trust arrangement or fiduciary duty between the City and the Developer. Following receipt of the Monetary Contribution, the City is not required to separately account for the Monetary Contribution, report to the Developer regarding expenditure of the Monetary Contribution or comply with any request by the Developer to trace the Monetary Contribution.

2.4 **Expenditure by the City**

A. Community Infrastructure Monetary Contribution

- (a) The City will use the Community Infrastructure Monetary Contribution to achieve the public benefit of community infrastructure being:
 - i. \$4,545,454 to the establishment and ongoing management of business innovation spaces in the CBD in accordance with the City's Tech Startups Action Plan
 - ii. \$454,546 to Planning Agreement administration
 - iii. \$7,988,080.00 to infrastructure projects in the City North Public Domain Masterplan.

B. Affordable Housing Monetary Contribution

The City will use the Affordable Housing Monetary Contribution to achieve the public benefit of increasing the amount of affordable housing in the City of Sydney local government area to achieve the City's affordable housing targets in Sustainable Sydney 2030.

3. **INSTRUMENTS**

- (a) The parties acknowledge that the Instruments at Annexure C may be amended to reflect the design of any awning and agreed terms of an easement for any awning over the Through Site Link.
- (b) Following execution of the Instruments by the Developer, the Developer will deliver the Instruments to the City for execution.
- (c) The City must execute and deliver the Instruments to the Developer as soon as reasonably practicable following receipt of the Instruments under sub clause 3(b).
- (d) The Developer must register the Instruments after completion of the Developer's Works but before the issue of the first Occupation Certificate for

the Development on the Mirvac Land, except for Instruments associated with the Telstra Land which will be registered on the earlier of any Occupation Certificate issued in respect of the Telstra Land or two years after the date of the first Occupation Certificate for the Development.

4. **TRANSFER LAND**

4.1 **Dedication of land – decision**

The Developer must, at its cost, take all steps required to transfer the Transfer Land to the City by the due date specified in clause 1 of Schedule 3. As part of this obligation, the Developer must confirm with the City whether the Transfer Land is to be:

- (a) dedicated to the City on registration of a plan of subdivision; or
- (b) transferred to the City on registration of a transfer instrument.

4.2 **Obligations on dedication**

The requirement for the Developer to dedicate the Transfer Land to the City is satisfied where a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW) or creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW).

4.3 **Obligations on transfer**

- (a) The requirement for the Developer to transfer the Transfer Land to the City is satisfied where:
 - (i) the City is given:
 - (A) an instrument in registrable form under the *Real Property Act 1900* (NSW) duly executed by the Developer as transferor that is effective to transfer the title to the Transfer Land to the City when executed by the City as transferee and registered;
 - (B) the written consent to the registration of the transfer of any person whose consent is required to that registration; and
 - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- (b) The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (c) The Developer must ensure that the Transfer Land is free of all encumbrances and affectations including rates, taxes and charges (whether registered or unregistered) except for any encumbrances that will be required to create the stratum, encumbrances contemplated in this document, the existing Easement for Electricity Purposes and encumbrances otherwise agreed in writing by the City in its absolute discretion.

- (d) The Developer must indemnify and agree to keep the City indemnified for a period of twelve years from the date of this document against all claims made against the City as a result of any Contamination within the Transfer Land but only in relation to Contamination that existed on or before the date that the Transfer Land is dedicated to the City in accordance with the requirements of this clause.
- (e) The Developer warrants that as at the date of this deed the Transfer Land is not subject to any Adverse Affectation and warrants as to those matters in Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2010 (NSW)*, unless otherwise notified to and agreed by the City in writing in its absolute discretion.

5. FINAL DESIGN OF THE DEVELOPER'S WORKS

5.1 Scope of Developer's Works

- (a) As at the date of this document, the nature and extent of the required Developer's Works is set out in Annexures D and F to this document. The parties agree that further design refinement of the Developer's Works may be necessary, having regard to:
 - (i) the extent to which the design of the Developer's Works has been approved by the City;
 - (ii) conditions reasonably affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document;
 - (iii) the extent of any refinement of the design of the Developer's Works permitted by Schedule 3;
 - (iv) the need to accommodate any modification to the Development Consent made and approved under section 4.55 of the Act or any other development consent granted that relates to the Developer's Works;
 - (v) design changes necessary or desirable to accommodate the requirements of and coordination with other uses in or part of the Development Application;
 - (vi) detailed structural analysis;
 - (vii) environmental performance requirements;
 - (viii) a decision that the Blast Wall is not required; and
 - (ix) the reasonable requirements of the City, including in regard to the Standards.
- (b) If further design refinement of the Developer's Works is necessary the parties shall meet as required to agree appropriate amendments to the design of any part of the Developer's Works.

- (c) If the City requires the Developer to change the design of the Developer's Works, it will use reasonable endeavours to ensure that any required changes do not significantly increase:
 - (i) the time taken to undertake the Developer's Works; or
 - (ii) the costs of the Developer's Works.

5.2 Final design of Developer's Works

- (a) With the lodgement of the first development application for the Development (other than for site establishment, demolition and early works such as hoarding, bulk excavation and alteration of in-ground services), the Developer must submit to the City's Representative for approval:
 - (i) detailed design drawings of the Developer's Works that reflect the plans and specifications set out in Annexures D and F; and
 - (ii) a detailed costs estimate (certified by a Quantity Surveyor) setting out the estimated cost of the Developer's Works.
- (b) Within 30 Business Days after the City's Representative has received the detailed design drawings and detailed costs estimate, the City will inform the Developer in writing as to whether the detailed design drawings and costs estimate are approved (acting reasonably). If the detailed design drawings or costs estimate are not approved, the City will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the required information, following which the process outlined in this paragraph (b) will apply again.
- (c) Regarding the costs estimate, the Developer agrees that the City may:
 - (i) reject items included within the Quantity Surveyor's Assessment which are not directly related to the Developer's Works;
 - (ii) require substantiation for the costs of items where the amount estimated is considered by the City to be excessive;
 - (iii) require an adjustment to the costs estimate to reflect a variation to the design required under this clause 5.2 of Schedule 3.
- (d) If the Developer:
 - (i) fails to prepare the detailed design drawings or detailed costs estimate; or
 - (ii) does not provide further information or modify the detailed design drawings or detailed costs estimate,

in accordance with this clause 5.2 of Schedule 3, then the City may exercise its rights under clause 10 of this document in order to carry out the Developer's Works itself at the cost of the Developer.
- (e) The Developer agrees that the value of the Developer's Works may be adjusted following completion of the process set out in this clause 5.2 of Schedule 3.

The Developer acknowledges that the scope of the Developer's Works will not change or reduce if the costs required to complete those works is greater than the amount estimated at the date of this document.

5.3 Preparation of and changes to construction design drawings

- (a) Following approval of the detailed design drawings by the City in accordance with clause 5.2 of Schedule 3, the Developer must promptly:
 - (i) prepare construction design drawings that comply with the detailed design drawings; and
 - (ii) provide the City with a copy of the construction design drawings.
- (b) The City, acting reasonably, may by written notice to the Developer at any time, approve, vary or direct the Developer to vary the construction design drawings so that the Developer's Works reflect:
 - (i) the Standards;
 - (ii) a departure or discrepancy from the plans approved under clause 5.2 of Schedule 3; or
 - (iii) any other standard or specification for materials or methodology for carrying out works that is adopted by the City from time to time, provided that any direction given under this clause 5.3(b)(iii) of Schedule 3 does not significantly increase:
 - (A) the cost of that element of the Developer's Works; or
 - (B) the complexity of implementation of the Developer's Works that may lead to a significant delay in the completion of the Developer's Works.
- (c) Within 20 Business Days of receiving a notice from the City under clause 5.3(b) of Schedule 3, the Developer must:
 - (i) to the extent practicable, use reasonable endeavours to comply with the notice given by the City; or
 - (ii) if the Developer determines that the notice given by the City is unreasonable or impracticable, notify a dispute in accordance with clause 11 of this document.

If the Developer does not provide any response during the 20 Business Days after receiving a notice from the City under clause 5.3(b) of Schedule 3, it is deemed that the Developer accepts the notice given by the City and will take all steps required to comply with the notice.

- (d) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under this clause 5.2(b) of Schedule 3 or for any errors, omissions or non-compliance with this document.
- (e) No participation by the City in the development of, the review of, or comments on any design drawings submitted by the Developer will lessen or otherwise

affect the Developer's obligations under this document or constitute an acknowledgement by the City that the Developer has complied with its obligations under this document.

6. **BLAST WALL**

6.1 **Blast Wall**

The Developer may advise the City in writing that the Blast Wall is not required to be built on the Through Site Link based on safety advice. If the Blast Wall is not required, the Developer will:

- (a) notify the City before construction of the Developer's Works over Queen's Court;
- (b) submit amended drawings to the City for its approval by adopting the process under clause 5.3 above; and
- (c) instead be required to provide evidence that it has provided the Additional Public Art Contribution by the dates set out in Item 5 of Schedule 3.

If Blast Wall is required, the Developer will not be required to provide the Additional Public Art Contribution.

7. **CONSTRUCTION OF DEVELOPER'S WORKS**

7.1 **Insurance**

- (a) From commencement of the Developer's Works until expiration of the Defects Liability Period, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:
 - (i) worker's compensation insurance or registrations as required by Laws;
 - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;
 - (iii) construction works insurance in relation to the Developer's Works; and
 - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the City:
 - (i) prior to commencing construction of the Developer's Works; and

- (ii) promptly following a written request by the City, provided that such a request is not made more than twice in any 12 month period.

7.2 **Approvals and consents**

- (a) The Developer must, at its cost, obtain all relevant approvals and consents for the Developer's Works, whether from the City or from any other relevant Government Agency, including any necessary road opening permits. Before commencing the Developer's Works, the Developer must give to the City copies of all approvals and consents for the Developer's Works, other than the Development Consent.
- (b) The City agrees to grant the Developer consent to enter, occupy and use Queens' Court on the terms set out in the consent at Annexure H.

7.3 **Construction work**

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works, including any approval given by the City under this document;
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use;
- (c) ensure that the Developer's Works are Complete by the due date specified in clause 1 of Schedule 3 and promptly after becoming aware advise the City's Representative of any significant delays in completing the Developer's Works or delays that may impact the delivery of the Public Benefits by the due date specified in clause 1 of Schedule 3; and
- (d) comply with all reasonable directions of the City in respect to construction of the Developer's Works.

7.4 **Inspections by the City**

The City, as a party to this document and not in its role as a Government Agency, may:

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

Any failure by the City to identify a Defect, error or omission will not be construed as amounting to an acceptance by the City of the Defect, error or omission.

8. ENVIRONMENTAL PERFORMANCE INITIATIVES

8.1 Environmental Performance Commitment

- (a) The Developer must complete the Environmental Performance Initiatives by the due dates specified in Item 7 of clause 1 of Schedule 3.
- (b) Within 12 months of the date of this document (or a later time approved by the City in writing) but prior to the issue of the first Construction Certificate for the Development, the Developer must submit to the City's Representative:
 - (i) the signed Commitment Agreement;
 - (ii) a hydraulic engineer report demonstrating water efficiency and how the proposed building is likely to achieve a 4 star NABERS water rating for the commercial component; and
 - (iii) the executive summary of the Energy Efficient Review prepared by a NABERS certified Independent Design Reviewer;together being the "Environmental Performance Commitment".
- (c) If the Developer fails to provide an Environmental Performance Commitment that will achieve the required NABERS ratings contained in item 7 of Schedule 3 then the Developer will meet with the City to agree on alternative measures it will put in place in order to achieve a sustainable Commercial Development.
- (d) The Developer will keep the City informed of its progress in relation to the achievement of its commitments with respect to the Environmental Performance Initiatives at regular intervals.

8.2 Environmental Performance Initiatives Guidelines

The following list of Guidelines are included for information purposes only for the general nature of the work identified as Environmental Performance Initiatives in this document. The City makes no representation or warranty as to the currency and completeness of the guidelines identified, or their application on the final design of the Environmental Performance Initiatives. The Developer must make its own enquiries regarding whether any guideline has been replaced or supplemented.

- Factsheet 4: Preparing for NABERS office rating applications prepared by NSW Office of Environment and Heritage, published August 2011
- Factsheet 5: Preparing for NABERS hotel rating prepared by NSW Office of Environment and Heritage, published September 2014
- Factsheet 7: The NABERS Energy Commitment Agreement prepared by NSW Office of Environment and Heritage, published July 2014;
- Guidelines for the use of simulation in Commitment Agreements prepared by NSW Office of Environment and Heritage, version 2011-June
- NABERS Guide to Building Energy Estimation, prepared by NSW Office of Environment and Heritage, published June 2011

- NABERS Guide to Tenancy Energy Estimation, prepared by NSW Office of Environment and Heritage, published June 2011
- Rules for collecting and using data (formerly titled Validation Protocol) version 3.0, February 2013, prepared by NSW Office of Environment and Heritage.
- City of Sydney Sustainable Design Technical Guideline

9. **STANDARDS**

The following list of Standards are included for information purposes only, and as a guide to the relevant standards for the general nature of the work identified as Developer's Works in this document. The City makes no representation or warranty as to the currency of the standards identified, or their application on the final design of the Developer's Works. The Developer must make its own enquiries regarding whether any standard has been replaced or supplemented. In the event that an Australian Standard prescribed a different level of material, finish, work or workmanship than those contained in a City standard, then the higher of the two standards will apply. If there is a conflict between City standards then the Developer must request the City nominate the correct and applicable City standard. The City's decision as to the applicable standard is final.

Relevant Australian Standards – Verge Works, Through site links

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 1743 Road signs
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1428 Design for Access and Mobility
- AS 4454 Composts, soil conditioners and mulches

Relevant Australian Standards – Roads (including pedestrian areas)

- AS 1725 Geotechnical Site investigations

- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1742 Manual of uniform traffic control devices
- AS 1743 Road Signs

City Standards (All Works)

- City of Sydney Contaminated Lands DCP 2004
- Sydney Street Code 2013
- Sydney Lights Code 2013
- City of Sydney Access Policy
- Sydney Street Technical Specification and Drawings
- City of Sydney Street Tree Master Plan 2011

EXECUTED as a deed.

Signed, sealed and delivered for
THE COUNCIL OF THE CITY OF
SYDNEY (ABN 22 636 550 790) by its
duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000

Address of witness

EXECUTED by MIRVAC CAPITAL
LIMITED as trustee for the Mirvac Pitt
Street Trust ABN 19 326 659 400 in
accordance with s127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by Mirvac Commercial Sub
SPV Pty Ltd as Trustee for Mirvac Pitt
Street Trust No.2 ABN 14 958 651 710
in accordance with s127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE A – COMMUNITY INFRASTRUCTURE MONETARY CONTRIBUTION

1. MONETARY CONTRIBUTION RATE

The monetary contribution rate for infrastructure is \$1200 per square metre of Strategic Gross Floor Area.

Strategic Gross Floor Area is the additional floor space granted under Sydney Local Environmental Plan 2012 being the difference between the maximum floor space of 15.02:1 and the following:

- (a) Mapped FSR of 8:1;
- (b) Any type of additional floor space under Clause 6.4 to 6.9 of Sydney Local Environmental Plan 2012.

2. INDEXATION OF RATES

Adjustments are to be made to the monetary contribution rates in Annexure A, Clause 1 as follows:

Monetary Contribution (to be provided) = Monetary Contribution (as per Annexure A Clause 1) x (A/B)

Where:

A is the Index Number most recently published before the date the Monetary Contribution is to be paid

B is the Index Number most recently published before the date this agreement commenced in accordance with clause 3.1 of this document

3. PAYMENT

Payment will be by unendorsed bank cheque to the City prior to issue of any Construction Certificate for the Development. In circumstances where no construction certificate is required at all for the Development, payment is required prior to commencement of construction works for the Development.

ANNEXURE B – AFFORDABLE HOUSING MONETARY CONTRIBUTION

1. BASE MONETARY CONTRIBUTION

The base monetary contribution for Affordable Housing is as follows:

0.5% x Total Floor Area x \$10,588* – where Development Consent is determined between 1 June 2020 to 31 May 2022

1% x Total Floor Area x \$10,588* - where Development Consent is determined from 1 June 2022 onwards

Total Floor Area means the total of the areas of each floor of a building within the outer face of the external enclosing walls and including balconies, but excluding the following:

(a) columns, fins, sun control devices, awnings and other elements, projections or works outside the general lines of the outer face of the external walls,

(b) any area of a balcony that is more than the minimum area required by the consent authority in respect of the balcony,

(c) the maximum ancillary car parking permitted by the consent authority and any associated internal vehicular and pedestrian access to that car parking,

(d) space for the loading and unloading of goods.

(e) space used for public utility undertakings, community facilities or roads

2. INDEXATION OF RATES

Adjustments are to be made to the monetary contribution rates in Annexure B Clause 1 to account for movements in the cost of housing over time on a quarterly basis, within one week of the first days of March, June, September and December each year.

Rates are adjusted with reference to movements in the median price for strata dwellings in the City of Sydney LGA. The median strata dwelling price is published quarterly in the NSW Government Rent and Sales Report, Table: Sales Price – Greater Metropolitan Region – Strata.

The formula for adjusting the contribution amount is:

Monetary Contribution = Base Contribution Amount x (MDP2/MDP1)

Where:

The Base Contribution Amount is the amount calculated in accordance with Annexure B Clause 1, based on the contribution rates applicable at the time of lodgement of the DA.

MDP1 is the median strata dwelling price applied on the date this agreement commenced in accordance with clause 3.1 of this document

MDP2 is the median strata dwelling price that applies at the time of payment of the Monetary Contribution.

Monetary contributions are adjusted and to be confirmed with the City prior to payment being made.

If after the formula is applied the Monetary Contribution will be less than the amount calculated in accordance with Annexure B Clause 2, the Monetary Contribution will not be adjusted.

3. **PAYMENT**

Payment will be by unendorsed bank cheque to the City prior to issue of any Construction Certificate for the Development. In circumstances where no Construction Certificate is required at all for the Development, payment is required prior to commencement of use/occupation.

4. **CREDIT**

Where a future Development Consent for the Development requires an affordable housing monetary contribution under the Sydney LEP (**Future Affordable Housing Contribution**), payment of the Affordable Housing Monetary Contribution calculated under Annexure B will be considered by the City to be satisfaction in full of that Future Affordable Housing Contribution even if the monetary contribution required under the Sydney LEP is less than the amount calculated in accordance with Annexure B.

ANNEXURE C - INSTRUMENTS AND PLAN

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

(Sheet 1 of 10 sheets)

Plan: Plan of easements, restrictive covenant and positive covenant over Lot 1 DP 787946, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046, Lot 1 DP 513109

Full name and address of the owners of the land:

Telstra Corporation Limited (ABN 33 051 775 556)
(Telstra)

Mirvac Capital Pty Limited and Mirvac Commercial Sub SPV Pty Ltd

Level 28, 200 George Street, Sydney NSW 2000

The Council of the City of Sydney

Town Hall House, Level 2, 456 Kent Street, 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):	Benefitted lot(s), road(s), bodies or Prescribed Authorities:
7	Easement for public access variable width limited in height and depth [<i>#insert consistent with final plan</i>]	Lot 1 in DP 787946	The Council of the City of Sydney
8	Positive Covenant (Public Access)	Lot 501 DP714847, Lots 2 and 3 DP 1092, Lot 7 DP 110046, Lot 1 DP 513109	The Council of the City of Sydney Lot 1 in DP 787946

Plan: Plan of easements and positive covenant

Part 2 (Terms)

1 INTERPRETATION

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised User means every person authorised by the Council or the Owner of the Lots Benefitted for the purposes of the Easement created by this Instrument. Subject to the terms of the Easement, an Authorised User includes the employees, agents, servants, contractors, workers, licensees and invitees of the Council or the Owner of the Lots Benefitted. Where the Easement benefits the Council or the Council is the owner of the Lot(s) Benefitted, an Authorised User includes members of the public.

Council means The Council of the City Sydney, its successors and any other body serving the same or similar function.

Easement means the easements, restrictive covenant or positive covenants in this Instrument and includes the conditions in relation to that Easement.

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

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

Grantee means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Benefitted.

Grantor means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Burdened.

Lot Benefitted means a lot referred to in Part 1 of this Instrument as being land benefitted by an Easement created by this Instrument.

Lot Burdened means a lot referred to in Part 1 of this Instrument as being land burdened by an Easement created by this Instrument.

Mirvac Site means Lot 501 DP 714847, Lots 2 and 3 DP 1092, Lots 1 and 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109.

Owner means every person who is at any time entitled to an estate in a lot referred to in Part 1 of this Instrument as registered proprietor or mortgagee in possession.

Plan means the plan registered together with this Instrument.

Required Credit Rating means a long-term credit rating of at least A- by Standard and Poor's (or equivalent rating).

Plan:

Plan of easements and positive covenant

1.2 Interpretation

In this Instrument:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (c) a reference to anything (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them;
- (d) specifying anything in this agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (e) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (f) the expression "Grantor" includes the Grantor, 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;
- (g) the expression "Grantee" includes the Grantee, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefitted or any part of it with which the right is capable of enjoyment;
- (h) the expression "Owner of the Mirvac Site" includes the current registered proprietor of the Mirvac Site, its successors in title and every person who is entitled to an estate or interest in possession of the Mirvac Site or any part of it with which the right is capable of enjoyment, but excludes (and does not include) any owners of lots in a strata scheme which may be created over the Mirvac Site.

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 anything 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 have full force and effect.

Plan:

Plan of easements and positive covenant

2 TERMS OF EASEMENT FOR PUBLIC ACCESS VARIABLE WIDTH LIMITED IN HEIGHT AND DEPTH [#INSERT] NUMBERED ONE IN THE PLAN

2.1 Grant

Subject to the Grantor's rights (and the rights of the Owner of the Mirvac Site) under clause 2.3 to 2.11, the Grantor grants to the Council and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times for the purpose of passing through the Easement Site as a means of access:

- (a) on foot; and/or
- (b) with wheelchairs or other disabled access aids, bicycles, tricycles or similar non-motorised machine (being walked or ridden), but excluding all other vehicles; and
- (c) with or without animals,

for all lawful purposes.

2.2 Purpose of the Easement

The Council, the Owner of the Mirvac Site and the Grantor acknowledge that the Easement is being provided at no cost to the public and is for the purpose of providing reasonable access over the Easement Site to any member of the public in accordance with and subject to the provisions of this Easement.

2.3 Requirements when exercising rights

When exercising its rights and complying with its obligations under this easement, the Council must (and must ensure its Authorised Users (excluding members of the public) take all reasonable steps:

- (a) to minimise inconvenience, disturbance or damage to the Grantor, the Lot Burdened and any occupier of the Lot Burdened; and
- (b) to cause as little damage as is practicable to the Lot Burdened and any improvements on it; and
- (c) if damage is caused by the Council (or its Authorised Users (excluding members of the public)), restore the Lot Burdened as nearly as practicable to the condition it was in before the damage occurred, as soon as reasonably possible.

2.4 Grantor may restrict access

Council and its Authorised Users may not exercise their rights under this easement:

- (a) during any period, notified by the Grantor or the Owner of the Mirvac Site to Council, in which the Grantor or the Owner of the Mirvac Site seeks to restrict access over the Easement Site in accordance with clause 2.5; and
- (b) during reasonable times notified by the Owner of the Mirvac Site to the Grantor and Council to enable the Owner of the Mirvac Site to comply with its obligations under the Positive Covenant (Public Access) numbered 2 in the Plan.

Plan:

Plan of easements and positive covenant

2.5 Restrictions on access

Without limiting the Grantor's rights under clauses 2.4 and 2.6, the Grantor and the Owner of the Mirvac Site may temporarily close, or temporarily restrict, public access to the Easement Site under this easement for:

- (a) the purposes of, or as a result of the repair or maintenance of any improvement (except major capital improvements) provided that:
 - (b) such restriction is for a period not exceeding one month (or such longer period of time as agreed by Council from time to time);
 - (c) where the restriction is for a period not exceeding 24 hours, reasonable steps are taken to minimise the disturbance caused in accordance with rights granted under clause 2.1; and
 - (d) where the restriction is likely to be for a period for between 24 hours and up to one month, the Grantor and the Owner of the Mirvac Site:
 - (A) obtain the prior written consent of the Council (such consent not to be unreasonably withheld) and comply with any conditions imposed on that consent; and
 - (B) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1; or
- (e) for any other purpose provided the Grantor or the Owner of the Mirvac Site:
 - (i) obtains the prior written consent of the Council and comply with any conditions imposed on that consent (such consent not to be unreasonably withheld); and
 - (ii) takes reasonable steps to minimise disturbance caused in accordance with the rights granted under clause 2.1.

2.6 Emergencies

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

Plan: Plan of easements and positive covenant

2.7 Inspection

The Grantor must upon reasonable notice, permit the Council to enter the Easement Site with any equipment or machinery reasonably necessary to inspect the Easement Site for the purposes of ensuring that the grantor under Positive Covenant numbered 2 in the Plan is complying with its obligations under the Positive Covenant numbered 2 in the Plan.

2.8 Name of the person or Authority empowered to release or vary or modify any or all of the Easement numbered one in the Plan:

The Council of the City of Sydney

3 TERMS OF POSITIVE COVENANT (PUBLIC ACCESS) NUMBERED TWO IN THE PLAN

3.1 Maintenance of Easement Site

The Grantor must:

- (a) at all times, maintain the Easement Site (including any lighting) in good condition and state of repair; and
- (b) not permit the Easement Site to become unsafe; and
- (c) keep the Easement Site clean and free from rubbish.

3.2 Public Liability Insurance

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities to Council, to the Grantee or to any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by Council (acting reasonably).
- (b) The policy referred to in clause 3.2(a) must:
 - (i) note Council and the Grantee as interested parties; and
 - (A) be taken out and maintained with a reputable insurer with the Required Credit Rating who either have their principal place of business in Australia; or
 - (B) is licensed by the Australian Prudential Regulation Authority to provide insurance in Australia.

3.3 Person empowered to release, vary or modify the Positive Covenant numbered two in the Plan:

This Positive Covenant may only be released, varied or modified with the consent of the Council of the City of Sydney and the Grantee.

Plan:

Plan of easements and positive covenant

3.4 Indemnity

The Grantor indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council, under Easement for Public Access numbered One on the Plan except to the extent that the claim or damage is caused by or contributed to by, the wilful or negligent act or omission of the Council.

4 SEVERAL LIABILITY OF COUNCIL AND OTHER GRANTOR

Notwithstanding anything to the contrary in this document, the Grantee agrees and acknowledges that, where the Easement Site includes more than one parcel of land (each a **Land Parcel**) and the Grantor consists of more than one person (each such person being an **Individual Parcel Owner**):

- (a) the obligations of each Individual Parcel Owner are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent); and
 - (b) each Individual Parcel Owner is entitled to exercise its rights independently of the other Individual Parcel Owner.
-

Plan:

Plan of easements and positive covenant

EXECUTION PAGE

Executed by Telstra Corporation Ltd as owner of Lot 1 in DP 787946

SIGNED, SEALED and DELIVERED for and on)
behalf of **Telstra** in the presence of:)
)
)

Plan:

Plan of easements and positive covenant

Executed by Mirvac Capital Pty Limited ABN 81 096 525 405 and Mirvac Commercial Sub SPV Pty Ltd ACN 125 706 130 as owners of [Lot 501 DP 714847, Lot 3 DP 1092, Lot 7 DP 110046 and Lot 1 DP 513109]

Executed by Mirvac Capital Pty Limited)
ABN 81 096 525 405 in accordance with)
Section 127 of the Corporations Act 2001 (Cth))

Signature of authorised person

Signature of authorised person

Office held

Office held

Name of authorised person
(BLOCK LETTERS)

Name of authorised person
(BLOCK LETTERS)

Executed by Mirvac Commercial Sub SPV Pty Ltd ACN 125 706 130)
in accordance with)
Section 127 of the Corporations Act 2001 (Cth))

Signature of authorised person

Signature of authorised person

Office held

Office held

Name of authorised person
(BLOCK LETTERS)

Name of authorised person
(BLOCK LETTERS)

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

(Sheet 1 of 22 sheets)

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046, Lot 1 DP 513109 and Queen's Court

Full name and address of the owners of the land:

Alpha Distribution Ministerial Holding Corporation
52 Martin Place, Sydney NSW 2000

Mirvac Capital Pty Limited and Mirvac Commercial Sub SPV Pty Ltd
Level 28, 200 George Street, Sydney NSW 2000

The Council of the City of Sydney
Town Hall House, Level 2, 456 Kent Street, 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):	Benefitted lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for public access variable width limited in height and depth [#insert consistent with final plan]	Lot B DP 104160, Lot 501 DP 714847, Lots 2 and 3 DP 1092, Lot 7 DP 110046, Lot 1 DP 513109], Queen's Court	The Council of the City of Sydney
2	Positive Covenant (Public Access)	Lot 501 DP714847, Lots 2 and 3 DP 1092, Lot 7 DP 110046, Lot 1 DP 513109	The Council of the City of Sydney Lots A DP 104160, Lot B DP 104160
3	Restriction On Use (Lane Works) variable width [#insert consistent with final plan] [#Note: Only the land on which the lane works are to occur will be burdened]	Lot B DP 104160	Lot 501 DP 714847 Lots 2 and 3 DP 1092 Lots 1 and 2 DP 1112308 Lot 6 DP 75338 Lot 4 DP 524306 Lot 7 DP 110046 Lot 1 DP 513109 The Council of the City of Sydney
4	Positive Covenant (Lane Works)	Lot 501 DP714847 Lots 2 and 3 DP 1092 Lots 1 and 2 DP 1112308 Lot 6 DP 75338 Lot 4 DP 524306 Lot 7 DP 110046 Lot 1 DP 513109	Lot A on DP104160, Lot B DP 104160 The Council of the City of Sydney

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

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):	Benefitted lot(s), road(s), bodies or Prescribed Authorities:
5	Easement for encroachment, support and overhang [#insert width consistent with final plan] [#insert description consistent with final plan] (Blast Wall)	Queen's Court	Lot 501 DP 714847 Lots 2 and 3 DP 1092 Lots 1 and 2 DP 1112308 Lot 6 DP 75338 Lot 4 DP 524306 Lot 7 DP 110046 Lot 1 DP 513109
6	Positive Covenant (Blast Wall)	Lot 501 DP714847 Lots 2 and 3 DP 1092 Lots 1 and 2 DP 1112308 Lot 6 DP 75338 Lot 4 DP 524306 Lot 7 DP 110046 Lot 1 DP 513109	Lot A on DP104160, Lot B DP 104160, Queen's Court

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

Part 2 (Terms)

1 INTERPRETATION

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised User means every person authorised by the Council or the Owner of the Lots Benefitted for the purposes of the Easement created by this Instrument. Subject to the terms of the Easement, an Authorised User includes the employees, agents, servants, contractors, workers, licensees and invitees of the Council or the Owner of the Lots Benefitted. Where the Easement benefits the Council or the Council is the owner of the Lot(s) Benefitted, an Authorised User includes members of the public.

Blast Wall means the protective wall (if any) constructed adjacent to the eastern wall of the Substation, but affixed to a building on the Mirvac Site, and includes ancillary structures such as an awning.

Council means The Council of the City Sydney, its successors and any other body serving the same or similar function.

Easement means the easements, restrictive covenant or positive covenants in this Instrument and includes the conditions in relation to that Easement.

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

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

Grantee means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Benefitted.

Grantor means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Burdened.

Lane Works means in respect of the Easement Site works installed to create the Through Site Link and activate the laneway in the Easement Site including without limitation hard and soft landscaping and also including (to the extent agreed between the Grantor and the Grantee) public art installations.

Lot Benefitted means a lot referred to in Part 1 of this Instrument as being land benefitted by an Easement created by this Instrument.

Lot Burdened means a lot referred to in Part 1 of this Instrument as being land burdened by an Easement created by this Instrument.

Mirvac Site means Lot 501 DP 714847, Lots 2 and 3 DP 1092, Lots 1 and 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109.

Network Headlease means the registered lease with dealing number AK971351.

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

Network Lease Land means Lot A in DP104160 and Lot B in DP104160.

Network Lease Land Freehold Owner means each person who is, from time to time, the registered owner of the freehold interest in the Network Lease Land.

Network Lease Land Occupier means:

- (a) during such time as the Network Headlease and Network Sublease remain on foot, the subtenant of the Network Lease Land under the Network Sublease; or
- (b) during such time (if any) as the Network Headlease remains on foot (but the Network Sublease has ceased to be on foot), the tenant of the Network Lease Land under the Network Headlease.

Network Leases means the Network Headlease and Network Sublease.

Network Leases End Date means 29 November 2115 or (if applicable) such earlier date on which the Network Headlease is terminated or is surrendered in respect of the relevant Network Lease Land.

Network Sublease means the registered sublease with dealing number AK971352.

Owner means every person who is at any time entitled to an estate in a lot referred to in Part 1 of this Instrument as registered proprietor or mortgagee in possession.

Plan means the plan registered together with this Instrument.

Queen's Court means the land known as Queen's Court and depicted in DP 267949.

Required Credit Rating means a long-term credit rating of at least A- by Standard and Poor's (or equivalent rating).

Substation Site means Lot A in DP104160.

Substation means the electricity substation operated on the Substation Site.

Through Site Link means the proposed future pedestrian link connecting Dalley Street and Underwood Street shown marked as [xx] on the Plan.

1.2 Interpretation

In this Instrument:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (c) a reference to anything (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them;
- (d) specifying anything in this agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (e) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (f) the expression "Grantor" includes the Grantor, 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;
- (g) the expression "Grantee" includes the Grantee, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefitted or any part of it with which the right is capable of enjoyment;
- (h) the expression "Owner of the Mirvac Site" includes the current registered proprietor of the Mirvac Site, its successors in title and every person who is entitled to an estate or interest in possession of the Mirvac Site or any part of it with which the right is capable of enjoyment, but excludes (and does not include) any owners of lots in a strata scheme which may be created over the Mirvac Site.

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 anything 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 have full force and effect.

2 TERMS OF EASEMENT FOR PUBLIC ACCESS VARIABLE WIDTH LIMITED IN HEIGHT AND DEPTH [#INSERT] NUMBERED ONE IN THE PLAN

2.1 Grant

Subject to the Grantor's rights under clauses 2.3 to 2.5, the Grantor grants to the Council and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times for the purpose of passing through the Easement Site as a means of access between Dalley Street and Underwood Street and as a means of access to the Mirvac Site:

- (a) on foot; and/or
- (b) with wheelchairs or other disabled access aids, bicycles, tricycles or similar non-motorised machines (being walked or ridden), but excluding all other vehicles; and/or
- (c) with or without animals,

for all lawful purposes.

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

2.2 Purpose of the Easement

The Council and the Grantor acknowledge that the Easement is being provided at no cost to the public and is for the purpose of providing reasonable access over the Easement Site to any member of the public in accordance with and subject to the provisions of this Easement.

2.3 Requirements when exercising rights

When exercising their rights and complying with their obligations under this easement, the Council and its Authorised Users (excluding members of the public) must take all reasonable steps:

- (a) to minimise inconvenience, disturbance or damage to the Grantor, the Lot Burdened and any occupier of the Lot Burdened; and
- (b) to cause as little damage as is practicable to the Lot Burdened and any improvements on it; and
- (c) if damage is caused by the Council (or its Authorised Users (excluding members of the public)), restore the Lot Burdened as nearly as practicable to the condition it was in before the damage occurred, as soon as reasonably possible.

2.4 Grantor may restrict access

Council and its Authorised Users may not exercise their rights under clause 2.1 of this easement:

- (a) during any period in which the Grantor is entitled to restrict access over the Easement Site in accordance with clause 2.5; and
- (b) during reasonable times notified by the grantor of the Positive Covenant (Public Access) numbered (2) in the Plan to Council to enable the grantor of the Positive Covenant (Public Access) numbered (2) in the Plan to comply with its obligations under the Positive Covenant (Public Access) numbered (2) in the Plan.

2.5 Restrictions on access

Without limiting the Grantor's rights under clauses 2.4 and 2.6, the Grantor may temporarily close, or temporarily restrict, public access to the Easement Site under this easement:

- (a) for the purposes of, or as a result of the repair or maintenance of any improvement on:
 - (i) the Substation Site (except construction, demolition and major capital improvements); and
 - (ii) the Mirvac Site (except construction, demolition and major capital improvements);
orprovided that:
 - (iii) such restriction is for a period not exceeding one month (or such longer period of time as agreed by Council from time to time);
 - (iv) where the restriction is for a period not exceeding 24 hours, reasonable steps are taken to minimise the disturbance caused in accordance with rights granted under clause 2.1; and

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (v) where the restriction is likely to be for a period for between 24 hours and up to one month, the Grantor:
 - (A) obtains the prior written consent of the Council and comply with any conditions imposed on that consent (such consent not to be unreasonably withheld); and
 - (B) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1; or
- (b) for any other purpose provided the Grantor:
 - (i) obtains the prior written consent of the Council and comply with any conditions imposed on that consent (such consent not to be unreasonably withheld); and
 - (ii) takes reasonable steps to minimise the disturbance caused in accordance with the rights granted under clause 2.1.

2.6 Emergencies

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

2.7 Inspection

The Grantor must upon reasonable notice, permit the Council to enter the Easement Site with any equipment or machinery reasonably necessary to inspect the Easement Site for the purposes of ensuring that the grantor under Positive Covenant numbered 2 in the Plan is complying with its obligations under the Positive Covenant numbered 2 in the Plan.

2.8 Several liability of Grantor entities

Notwithstanding anything to the contrary in this document, the parties agree and acknowledge that:

- (a) where the Easement Site includes more than one parcel of land (each, for the purposes of this clause 2.7, a **Land Parcel**) and the Grantor consists of more than one person (each such person being, for the purposes of this clause 2.7, an **Individual Parcel Owner**):
 - (i) the obligations of each Individual Parcel Owner under this clause 2 are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent); and

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (ii) each Individual Parcel Owner is entitled to exercise its rights under this clause 2 independently of the other Individual Parcel Owner.

2.9 Name of the person or Authority empowered to release or vary or modify any or all of the Easement numbered one in the Plan:

The Council of the City of Sydney

3 TERMS OF POSITIVE COVENANT (PUBLIC ACCESS) NUMBERED TWO IN THE PLAN

3.1 Maintenance of Easement Site

The Grantor must:

- (a) at all times, maintain the Easement Site (including any lighting) in good condition and state of repair; and
- (b) not permit the Easement Site to become unsafe; and
- (c) keep the Easement Site clean and free from rubbish.

3.2 Public Liability Insurance

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities to Council, to the Grantee or to any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by Council (acting reasonably).
- (b) The policy referred to in clause 3.2(a) must:
 - (i) note Council and the Grantee as interested parties; and
 - (ii) be taken out and maintained with reputable insurers which at all times hold at least the Required Credit Rating and who either:
 - (A) have their principal place of business in Australia; or
 - (B) is licensed by the Australian Prudential Regulation Authority to provide insurance in Australia.

3.3 Several liability of Grantee entities

Notwithstanding anything to the contrary in this document, the parties agree and acknowledge that, where this Easement benefits more than one Lot Benefitted (each, for the purposes of this clause 3.3, a **Land Parcel**) and the Grantee consists of more than one person (each such person being, for the purposes of this clause 3.3, an **Individual Parcel Owner**):

- (a) the obligations of each Individual Parcel Owner under this clause 3 are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent); and
- (b) each Individual Parcel Owner is entitled to exercise its rights under this clause 3 independently of the other Individual Parcel Owner.

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

3.4 Indemnity

- (a) The Grantor indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council or any of its Authorised Users under Easement for Public Access numbered One on the Plan except to the extent that the claim or damage is caused by or contributed to by, the wilful or negligent act or omission of the Council or any of its Authorised Users (excluding any member of the public).
- (b) The Grantor agrees to indemnify the Owner of the Network Lease Land against any damage or loss suffered or incurred by the Owner of the Network Lease Land arising from or as a consequence of the use of the Easement Site under Easement for Public Access numbered One on the Plan by Council and its Authorised Users, and the Grantor and its Authorised Users, including but not limited to:
 - (i) damage to the Easement Site or Substation Site, including any improvements except fair wear and tear;
 - (ii) damage to any property of the Owner of the Network Lease Land or any other person; and
 - (iii) injury or death caused to any person on the Easement Site or Substation Site.

3.5 Reduction of indemnity

The indemnities given by the Grantor under clause 3.4(b) will (without limiting clause 10) be reduced proportionately to the extent that the damage, loss, expense, liability, injury or death arises from a negligent act or omission of the Owner of the Network Lease Land or its officers, employees, contractors or agents.

3.6 Person empowered to release, vary or modify the Positive Covenant numbered two in the Plan:

This Positive Covenant may only be released, varied or modified with the consent of the Council of the City of Sydney and the Grantee.

4 RESTRICTION ON USE (LANE WORKS) NUMBERED THREE IN THE PLAN

4.1 Terms of restriction

During the term of this Easement:

- (a) the Grantor must not remove the Lane Works from the Easement Site without the consent of the Grantee; and
- (b) the Grantee (excluding Council) must not remove the Lane Works from the Easement Site without the consent of Council.

4.2 Release of Restriction

- (a) The Grantor and the Grantee agree that this Easement releases on the earlier of:
 - (i) the Grantee removing the Lane Works from the Easement Site (which must not be performed without the prior consent of Council); and
 - (ii) the date on which the Grantor and the Grantee agree in writing that this Easement is to be released.

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (b) The Grantor and the Grantee agree to sign all documents and do all things reasonably necessary to give effect to the release of this Easement, including but not limited to preparing a dealing to record the release of this Easement, where this Easement is released under clause 4.2(a).

4.3 Several liability of Grantee entities

Notwithstanding anything to the contrary in this document, the parties agree and acknowledge that:

- (a) where this Easement benefits more than one Lot Benefitted (each, for the purposes of this clause 4.3, a **Land Parcel**) and the Grantee consists of more than one person (each such person being, for the purposes of this clause 4.3, an **Individual Parcel Owner**):
- (i) the obligations of each Individual Parcel Owner under this clause 4 are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent);
 - (ii) each Individual Parcel Owner is entitled to exercise its rights under this clause 4 independently of the other Individual Parcel Owner; and
- (b) subject to clause 4.3(a):
- (i) obligations under this clause 4 which are imposed on both the Grantee and the Owner of the Mirvac Site are limited to the extent the Lot Benefitted or Mirvac Site (as applicable) is owned by the Grantee or Owner of the Mirvac Site (as applicable) (and each of the Grantee and the Owner of the Mirvac Site is severally liable to that extent); and
 - (ii) rights under this clause 4 which are granted in favour of both the Grantee and the Owner of the Mirvac Site can be exercised by the Grantee or Owner of the Mirvac Site independently of the other of them.

4.4 Name of Authority empowered to release or vary or modify any or all of the Restriction on Use (Land Works) numbered three in the Plan:

The Grantee and Council

5 TERMS OF POSITIVE COVENANT (LANE WORKS) NUMBERED FOUR ON THE PLAN

5.1 Maintenance of Easement Site

The Grantor must whilst the Restriction On Use (Lane Works) numbered three in the Plan is in force:

- (a) at all times, maintain the Easement Site and Lane Works in good condition and state of repair;
- (b) upon reasonable notice permit the Council to enter the Easement Site with any equipment or machinery reasonably necessary to inspect the Easement Site and Lane Works for the purposes of ensuring that the Grantor is complying with its obligations under this Positive Covenant; and
- (c) not permit the Easement Site or Lane Works to become unsafe.

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

5.2 Access by Grantor

When accessing the Easement Site to carry out works as required under this Positive Covenant (Lane Works), the Grantor must give reasonable notice to the Grantee and comply with its obligations under any easements benefitting the Mirvac Site as they relate to the Lot Benefitted.

5.3 Expiry of Positive Covenant

The Grantor and the Grantee agree that this positive covenant expires upon the release of the Restriction on Use (Lane Works) numbered three in this Instrument.

5.4 Several liability of Grantee entities

Notwithstanding anything to the contrary in this document, the parties agree and acknowledge that, where this Easement benefits more than one Lot Benefitted (each, for the purposes of this clause 5.3, a **Land Parcel**) and the Grantee consists of more than one person (each such person being, for the purposes of this clause 5.3, an **Individual Parcel Owner**):

- (a) the obligations of each Individual Parcel Owner under this clause 5 are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent); and
- (b) each Individual Parcel Owner is entitled to exercise its rights under this clause 5 independently of the other Individual Parcel Owner.

5.5 Indemnity

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

- (a) damage to the Easement Site or Substation Site, including any improvements except fair wear and tear;
- (b) damage to any property of the Grantee or any other person; and
- (c) injury or death caused to any person on the Easement Site or Substation Site.

5.6 Reduction of indemnity

The indemnities given by the Grantor under clause 5.5 will (without limiting clause 10) be reduced proportionately to the extent that the damage, loss, expense, liability, injury or death arises from a negligent act or omission of the Grantee or its officers, employees, contractors or agents.

5.7 Public Liability Insurance

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities to the Council and any third parties for the death or injury of any person within or about the Easement Site for an amount in respect of a single accident of not less than \$20 million.
- (b) The policy referred to in clause 5.7(a) must:
 - (i) note the Council as an interested party; and

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (ii) be taken out and maintained with reputable insurers which at all times hold at least the Required Credit Rating and who either:
 - (A) have their principal place of business in Australia; or
 - (B) is licensed by the Australian Prudential Regulation Authority to provide insurance in Australia.

5.8 Persons empowered to release, vary or modify the Positive Covenant numbered four in the Plan:

This Positive Covenant may only be released, varied or modified with the consent of the Grantor, the Grantee and Council.

6 EASEMENT FOR ENCROACHMENT SUPPORT AND OVERHANG NUMBERED FIVE IN THE PLAN (BLAST WALL)

6.1 Terms of easement

The Grantor grants the Grantee a full and free right:

- (a) for subjacent and lateral support of the Blast Wall, which is owned by the Owner of the Mirvac Site, within the Easement Site; and
- (b) to insist that the Grantee's Blast Wall within the Easement Site remain for so long as the Substation is erected on the Substation Site; and
- (c) to enter the Easement Site on foot or by vehicle to carry out repair and maintenance of the Blast Wall provided it is routine maintenance; and
- (d) to take with them such workmen, tools, equipment and materials as is reasonable and necessary in the circumstances provided it is routine maintenance.

6.2 Obligations under the Easement

In exercising powers conferred on it by this easement, the Grantee must:

- (a) ensure all work is done properly;
- (b) cause as little inconvenience as is practicable to any user or occupier of the Easement Site;
- (c) cause as little damage as is practicable to the Easement Site and any improvements on the land;
- (d) restore any excavated surface as nearly as possible to its original state; and
- (e) make good any damage attributable to the works referred to in clause 6.1.

6.3 Release of Easement

- (a) The Grantor and the Grantee agree that upon the demolition of the Substation or the de-energisation of the transformers installed as at the date of this Instrument the Grantee may determine that the Blast Wall may not be required such that the easement is no longer required and request a release from Council.

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (b) Council must not unreasonably withhold consent to the release of this easement under clause 6.3(a) if:
- (i) the request is issued not before:
 - (A) a final occupation certificate under the *Environmental Planning and Assessment Act 1979* has been issued for the Mirvac Site in respect of a commercial office tower of at least 155 metres; or
 - (B) 31 December 2027 (if earlier); and
 - (ii) the Owner of the Substation Site gives the Council and the Grantee at least 6 months' notice of the intended demolition of the Substation or the de-energisation of the transformers in the Substation; and
 - (iii) the Grantee prepares and provides to Council plans and documentation demonstrating the methodology for removal, reinstatement and relocation or replacement proposal for artwork (if any) on the Blast Wall and Council provides written approval of those plans (such approval not to be unreasonably withheld).
- (c) In the event that Council has agreed to the release under (b), the Grantor and the Grantee agree to sign all documents and do all things, reasonably necessary to give effect to the release of this easement (and the removal of the Blast Wall) including but not limited to preparing a dealing to record the release of this easement.

6.4 Several liability of Grantor entities

Notwithstanding anything to the contrary in this document, the parties agree and acknowledge that:

- (a) where the Easement Site includes more than one parcel of land (each, for the purposes of this clause 6.4, a **Land Parcel**) and the Grantor consists of more than one person (each such person being, for the purposes of this clause 6.4, an **Individual Parcel Owner**):
- (i) the obligations of each Individual Parcel Owner under this clause 6 are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent); and
 - (ii) each Individual Parcel Owner is entitled to exercise its rights under this clause 6 independently of the other Individual Parcel Owner.

6.5 Persons empowered to release, vary or modify the Easement numbered five in the Plan:

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

7 TERMS OF POSITIVE COVENANT (BLAST WALL) NUMBERED SIX ON THE PLAN

7.1 Maintenance of Easement Site

The Grantor must whilst the Easement for Encroachment, Support and Overhang numbered five in the Plan is in force:

- (a) at all times, maintain the Easement Site and Blast Wall in good condition and state of repair; and

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (b) upon reasonable notice permit Council to enter the Easement Site with any equipment or machinery reasonably necessary to inspect the Easement Site and the Blast Wall for the purposes of ensuring that the Grantor is complying with its obligations under this Positive Covenant;
- (c) ensure that (not less than once every year) the Blast Wall is inspected by a structural engineer for structural adequacy and promptly after such inspection:
 - (i) provide the Grantee with a report from the structural engineer advising whether any repair works to the Blast Wall are required to ensure structural adequacy;
 - (ii) if the structural engineer identifies the need for repair work to the Blast Wall to ensure structural adequacy, carry out that required work; and
 - (iii) provide the Grantee with a certificate from the structural engineer which certifies the structural adequacy of the Blast Wall; and
- (d) not permit the Easement Site or Blast Wall to become unsafe;
- (e) as applicable under clause 6 (being the clause of this Instrument setting out the terms of the Easement for Encroachment, Support and Overhang numbered five in the Plan):
 - (i) either demolish and remove or permit the Owner of the Substation Site to demolish and remove (and co-operate with the Owner of Substation Site in that demolition and removal) the Blast Wall provided it is with the consent of Council; and
 - (ii) take all reasonable steps to minimise inconvenience, disturbance or damage to the land owned by Grantee (including the buildings on that land and the business being conducted on the land);
 - (iii) to the extent, in conducting the demolition and removal, damage is caused to the land owned by the Grantee or improvements on that land (other than the Blast Wall and all subjacent and lateral support), promptly rectify that damage to the extent practicable;
 - (iv) ensure any approvals required under law to carry out the demolition and removal are obtained; and
 - (v) (where the Substation has not been, and is not proposed to be, demolished) consult in good faith with the Grantee regarding potential replacement façade treatments for the Substation which may be appropriate given removal of the Blast Wall.

7.2 Public Liability Insurance

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities to Council, to the Grantee or to any other person for the death or injury of any person within or about the Easement Site or Blast Wall for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by Council (acting reasonably).
- (b) The policy referred to in clause 7.2(a) must:
 - (i) note Council and the Grantee as interested parties; and

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (ii) be taken out and maintained with reputable insurers of good repute who at all times hold at least the Required Credit Rating and who either:
 - (A) have their principal place of business in Australia; or
 - (B) is licensed by the Australian Prudential Regulation Authority to provide insurance in Australia.

7.3 Expiry of Positive Covenant

The Grantor and the Grantee agree that the positive covenant expires upon the release of the encroachment support and overhang easement numbered five in this Instrument.

7.4 Several liability of Grantee entities

Notwithstanding anything to the contrary in this document, the parties agree and acknowledge that, where this Easement benefits more than one Lot Benefitted (each, for the purposes of this clause 7.4, a **Land Parcel**) and the Grantee consists of more than one person (each such person being, for the purposes of this clause 7.4, an **Individual Parcel Owner**):

- (a) the obligations of each Individual Parcel Owner under this clause 7 are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent); and
- (b) each Individual Parcel Owner is entitled to exercise its rights under this clause 7 independently of the other Individual Parcel Owner.

7.5 Indemnity

- (a) The Grantor indemnifies the Council against any claims or damages arising from the use of the Easement Site and Blast Wall by the Grantor except to the extent that the claim or damage is caused by or contributed to by, the wilful or negligent act or omission of the Council.
- (b) The Grantor agrees to indemnify the Owner of the Network Lease Land against any damage or loss suffered or incurred by the Owner of the Network Lease Land arising from or as a consequence of the use of the Easement Site and the Blast Wall by Council and its Authorised Users, and the Grantor and its Authorised Users, including but not limited to:
 - (i) damage to the Easement Site or Substation Site, including any improvements except fair wear and tear;
 - (ii) damage to any property of the Owner of the Network Lease Land or any other person; and
 - (iii) injury or death caused to any person on the Easement Site or Substation Site.

7.6 Reduction of indemnity

The indemnities given by the Grantor under clause 7.5(b) will (without limiting clause 10) be reduced proportionately to the extent that the damage, loss, expense, liability, injury or death arises from a negligent act or omission of the Grantee or its officers, employees, contractors or agents.

Plan: Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

7.7 Persons empowered to release, vary or modify the Positive Covenant numbered six in the Plan:

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

8 RELEASE – EASEMENTS

8.1 Application of this clause

This clause 8 applies to each Easement in this Instrument, except for any Easement which is a positive covenant, restrictive covenant or restriction on use.

8.2 Release

- (a) Council, its Authorised Users and any member of the public and the Grantee and its Authorised Users enter upon the Easement Site at their own risk.
 - (b) The Council and the Grantee hereby release the Grantor of the Easement 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 the Easement Site under the terms of any Easement in this Instrument unless the loss is caused by the wilful acts or omissions or negligence of the Grantor or its officers, employees, contractors or agents.
-

9 RELEASE – POSITIVE COVENANTS

9.1 Application of this clause

This clause 9 applies to each Easement in this Instrument which is a positive covenant (but does not apply to any Easement which is an easement, restrictive covenant or restriction on use).

9.2 Release

- (a) Council, its Authorised Users and any member of the public and the Grantor and its Authorised Users enter upon the Easement Site at their own risk.
- (b) The Council releases the Grantor of the Easement 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 the Easement Site under the terms of any Easement in this Instrument unless the loss is caused by the wilful acts or omissions or negligence of the Grantor or its officers, employees, contractors or agents.
- (c) The Council and the Grantor releases the Grantee of the Easement 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 the Easement Site under the terms of any Easement in this Instrument unless the loss is caused by the wilful acts or omissions or negligence of the Grantee or its officers, employees, contractors or agents

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

10 OPERATION DURING TERM OF NETWORK LEASES

10.1 Occupier to perform obligations and hold rights

Notwithstanding anything to the contrary in clauses 1 to 9 of this document (**Operative Provisions**), during the period prior to the Network Leases End Date (**Network Lease Land Occupier Period**):

- (a) any obligations under the Operative Provisions which would otherwise be imposed on the Network Lease Land Freehold Owner are (instead) imposed on the Network Lease Land Occupier (in each case as if the Network Lease Land Occupier was named in place of the Network Lease Land Freehold Owner);
- (b) any indemnity which would otherwise be given under the Operative Provisions by the Network Lease Land Freehold Owner is (instead) given by the Network Lease Land Occupier (and references in such indemnity provisions to the Network Lease Land Freehold Owner are taken to be references to the Network Lease Land Occupier);
- (c) without limiting clause 10.1(a) the Network Lease Land Freehold Owner must not exercise or purport to exercise any right under the Operative Provisions (including any right to release, vary or modify any term of this document) without obtaining the written consent of the Network Lease Land Occupier;
- (d) any indemnity which would otherwise be given under the Operative Provisions in favour of the Network Lease Land Freehold Owner is (instead) given in favour of each of (jointly and severally):
 - (i) the Network Lease Land Freehold Owner; and
 - (ii) the Network Lease Land Occupier,

(in each case as if they were both named in place of the Network Lease Freehold Owner);

- (e) any notice which is (as drafted) required to be given to either the Network Lease Land Freehold Owner or the Network Lease Land Occupier must be given to both of them; and
- (f) the Network Lease Land Occupier agrees to give to the Network Lease Land Freehold Owner a copy of any notice that the Network Lease Land Occupier gives under clause 6.3(b)(i).

10.2 Network Lease Land Freehold Owner assistance

- (a) Subject to clause 10.2(b), the Network Lease Land Freehold Owner agrees to, promptly on request by the Network Lease Land Occupier, provide (at the cost of the Network Lease Land Occupier) such assistance as is reasonably required by the Network Lease Land Occupier (including providing consents or entering into documentation as applicable) to enable the Network Lease Land Occupier to exercise its rights or perform its obligations under the Operative Provisions.
- (b) The obligations of the Network Lease Land Freehold Owner under clause 10.2(a):

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

- (i) apply only to the extent that the relevant assistance requested is not able to be satisfied by the Network Lease Land Occupier as lessee of the Network Lease Land; and
- (ii) apply from the date of this document until the end of the Network Lease Land Occupier Period.

10.3 End of term

All parties agree that:

- (a) clauses 10.1 and 10.2 cease to apply at the end of the Network Lease Land Occupier Period;
 - (b) subject to clause 10.3(c), the Network Lease Land Occupier is released from, and has no right, obligation or liability under, the Operative Provisions in respect of the period after the Network Lease Land Occupier Period;
 - (c) nothing in clause 10.3(b) releases the Network Lease Land Occupier from liability for a breach of an Operative Provision by the Network Lease Land Occupier prior to the end of the Network Lease Land Occupier Period; and
 - (d) the liability of the Network Lease Land Freehold Owner under any indemnity it gives under an Operative Provision is reduced to the extent the Network Lease Land Occupier remains liable under clause 10.3(c).
-

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

EXECUTION PAGE

Executed by Alpha Distribution Ministerial Holding Corporation as owner of Lot A in DP 104160 and Lot B in DP 104160

SIGNED, SEALED and DELIVERED for and on)
behalf of **Alpha Distribution Ministerial**)
Holding Corporation 67 505 387 385 in the)
presence of:)

.....
Signature of Witness

.....
Signature of Agent for Michael Pratt, NSW
Treasury Secretary (NSW Treasurer's delegate
under delegation dated 24 November 2015), on
behalf of Alpha Distribution Ministerial Holding
Corporation

.....
Print name of Witness

.....
Name of Agent in full

52 Martin Place, Sydney NSW 2000

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

Executed by Mirvac Capital Pty Limited ABN 81 096 525 405 and Mirvac Commercial Sub SPV Pty Ltd ACN 125 706 130 as owners of [Lot 501 DP 714847, Lot 3 DP 1092, Lot 7 DP 110046 and Lot 1 DP 513109]

Executed by Mirvac Capital Pty Limited)
ABN 81 096 525 405 in accordance with)
Section 127 of the Corporations Act 2001 (Cth))

Signature of authorised person

Signature of authorised person

Office held

Office held

Name of authorised person
(BLOCK LETTERS)

Name of authorised person
(BLOCK LETTERS)

Executed by Mirvac Commercial Sub SPV Pty)
Ltd ACN 125 706 130 in accordance with)
Section 127 of the Corporations Act 2001 (Cth))

Signature of authorised person

Signature of authorised person

Office held

Office held

Name of authorised person
(BLOCK LETTERS)

Name of authorised person
(BLOCK LETTERS)

Plan:

Plan of easements, restrictive covenant and positive covenant over Lot A in DP 104160, Lot B in DP 104160, Lot 501 DP 714847, Lot 2 DP 1092, Lot 3 DP 1092, Lot 1 DP 1112308, Lot 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109

Executed by BLUE ASSET PARTNER PTY LTD, ERIC ALPHA ASSET CORPORATION 1 PTY LTD, ERIC ALPHA ASSET CORPORATION 2 PTY LTD, ERIC ALPHA ASSET CORPORATION 3 PTY LTD & ERIC ALPHA ASSET CORPORATION 4 PTY LTD as tenant of Lot A in DP 104160 and Lot B in DP 104160 under registered lease number AK971351.

[#insert execution block]

Executed by BLUE OP PARTNER PTY LTD, ERIC ALPHA OPERATOR CORPORATION 1 PTY LTD, ERIC ALPHA OPERATOR CORPORATION 2 PTY LTD, ERIC ALPHA OPERATOR CORPORATION 3 PTY LTD & ERIC ALPHA OPERATOR CORPORATION 4 PTY LTD as tenant of Lot A in DP 104160 and Lot B in DP 104160 under registered sublease number AK971352.

[#insert execution block]

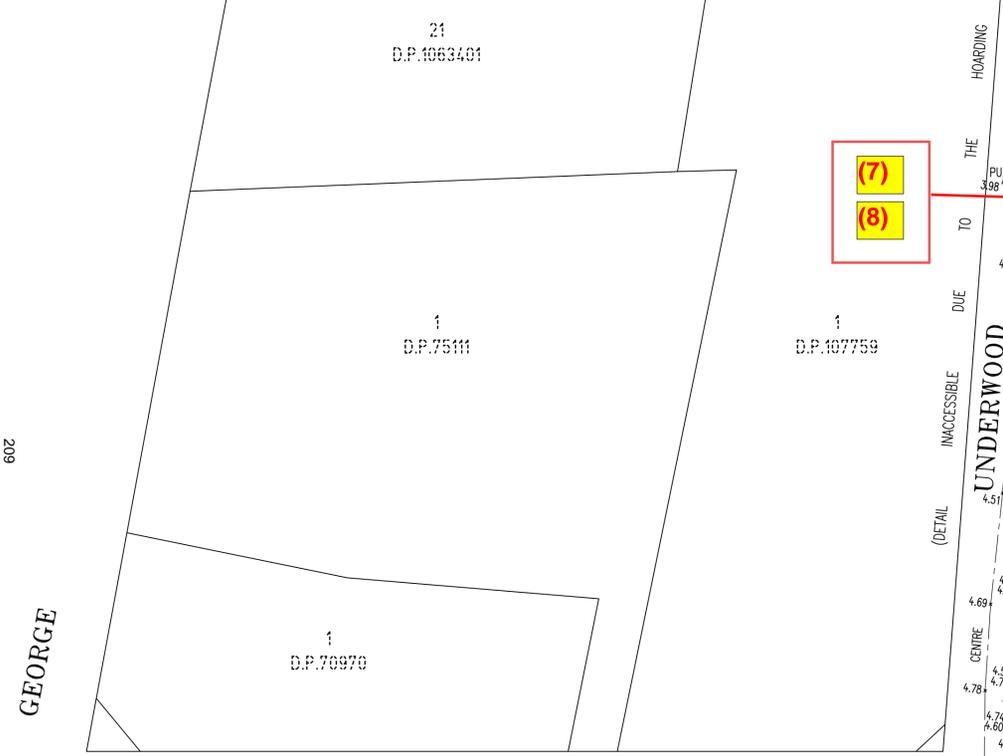
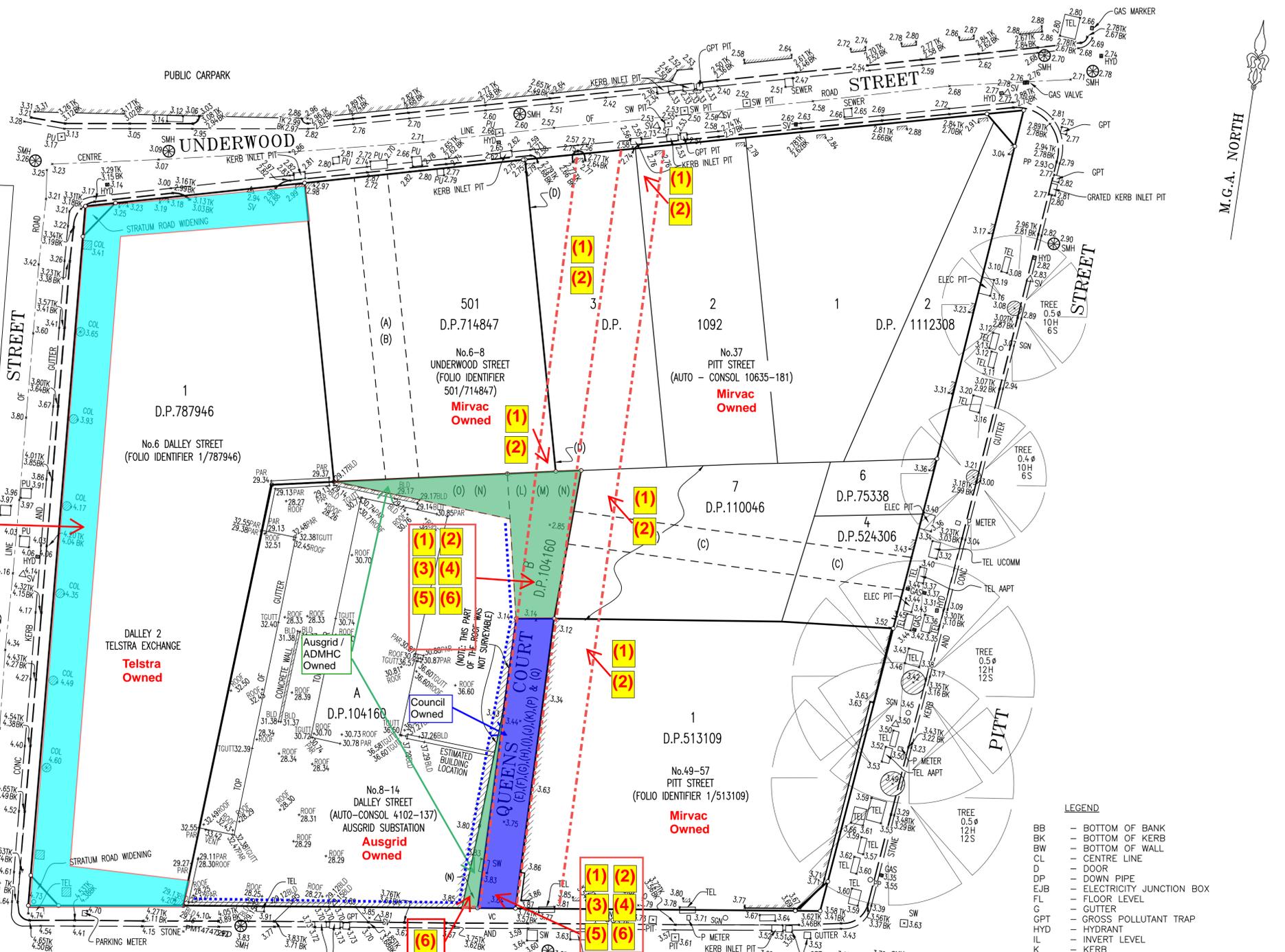
Part of Annexure C

SSK 006 - Instruments Plan

Revision 06

Date: 06/09/20

- Ausgrid / ADMHC Owned
- Council Owned
- Blast Wall location
- Telstra Owned (colonnade shown indicatively N.T.S.)



- (A) - EASEMENT FOR ELECTRICITY PURPOSES (K953021)
- (B) - EASEMENT FOR ELECTRICITY PURPOSES (Q254110)
- (C) - EASEMENT FOR ELECTRICITY PURPOSES 2.745 WIDE (M838242)
- (D) - EASEMENT FOR SUPPORT VARIABLE WIDTH (I80685) (SHOWN ON D.P.647317)
- (E) - RIGHT OF CARRIAGEWAY 3.1 WIDE (D.P.267949)
- (F) - RIGHT OF FOOTWAY 3.1 WIDE (D.P.267949)
- (G) - EASEMENT TO PERMIT ENCROACHING STRUCTURE TO REMAIN (D.P.267949)
- (H) - EASEMENT FOR LIGHT AND AIR 3.1 WIDE (D.P.267949)
- (I) - EASEMENT FOR ACCESS (D.P.267949)
- (J) - EASEMENT FOR OVERHANG (D.P.267949)
- (K) - EASEMENT FOR REPAIRS (D.P.267949)
- (L) - RIGHT OF WAY (C700936)
- (M) - EASEMENT FOR LIGHT AND AIR (M860354)
- (N) - RIGHT OF WAY (B989194)
- (O) - EASEMENT FOR LIGHT AND AIR (B989194)
- (P) - EASEMENT FOR ELECTRICITY SUPPLY PURPOSES (GOV. GAZETTE No. 105)
- (Q) - RIGHT OF WAY (CONV. No.134 BOOK1210)
- (R) - LAND BENEFITTED BY RIGHT OF WAY (C700936), RIGHT OF CARRIAGEWAY (D.P.267949) AND RIGHT OF FOOTWAY (D.P.267949)

NOTES:

- ORIGIN OF LEVELS PM 150301, R.L.8.662 (A.H.D.).
- FOR THE BOUNDARY DIMENSIONS AND RELATIONSHIP OF SELECTED STRUCTURES TO BOUNDARIES, SEE PLAN REF 130914--BOUNDARIES, DATED 29.10.2013 AND TITLED "PLAN SHOWING SURVEYED BOUNDARY DIMENSIONS..."
- RELATIONSHIP OF IMPROVEMENTS AND DETAIL TO BOUNDARIES IS DIAGRAMMATIC ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY.
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- ADJOINING BUILDINGS AND DWELLINGS HAVE BEEN PLOTTED FOR DIAGRAMMATIC PURPOSES ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY.
- THE SPREAD & HEIGHT OF EACH TREE IS INDICATIVE ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY.

- (1) = Easement for public access
- (2) = Positive covenant (public access)
- (3) = Restriction on use (Lane Works) [Note: only the area on which the Lane Works are constructed will be burdened]
- (4) = Positive Covenant (Lane Works)
- (5) = Easement for encroachment, support & overhang (blast wall)
- (6) = Positive covenant (blast wall)
- (7) = Easement for public access (Telstra Land)
- (8) = Positive covenant (public access) (Telstra Land)

- LEGEND**
- BB - BOTTOM OF BANK
 - BK - BOTTOM OF KERB
 - BW - BOTTOM OF WALL
 - CL - CENTRE LINE
 - D - DOOR
 - EUB - ELECTRICITY JUNCTION BOX
 - FL - FLOOR LEVEL
 - G - GUTTER
 - GPT - GROSS POLLUTANT TRAP
 - HYD - HYDRANT
 - IL - INVERT LEVEL
 - K - KERB
 - LP - LAMP POST
 - MH - MANHOLE
 - OPT - OPTUS
 - PAR - PARAPET
 - PP - POWER POLE
 - ROOF - SPOT LEVELS ON LOWER PART OF ROOF
 - RR - ROOF RIDGE
 - SEW - SEWER
 - SGN - SIGN
 - SLH - SEWER LAMP HOLE
 - SMH - SEWER MANHOLE
 - SV - STOP VALVE
 - SW - STORM WATER
 - TB - TOP OF BANK
 - TEL - TELSTRA PIT
 - TELP - TELSTRA PILLAR
 - TG - TOP OF GUTTER
 - TK - TOP OF KERB
 - TL - TRAFFIC LIGHT
 - TLCB - TRAFFIC LIGHT CONTROL BOX
 - TL/PB - TRAFFIC LIGHT WITH PEDESTRIAN BUTTON
 - TGUTT - TOP OF GUTTER
 - P METER - PARKING METER
 - TP - TOP OF PARAPET
 - TW - TOP OF WALL
 - VC - VEHICLE CROSSING
 - U/S - UNDERSIDE
 - W - WINDOW

PLAN SHOWING SELECTED DETAIL AND LEVELS AT UNDERWOOD, DALLEY AND PITT STREETS SYDNEY

DATE	BY	REVISION	ISSUE
24.02.17	TM/JJ	ADDITIONAL ROOF DETAIL	2
29.10.13	AK/WP	ORIGINAL ISSUE	1

CONSULTING SURVEYORS		RATIO: 1:200	DATE	
DENNY LINKER & CO.			29.10.2013	
SYDNEY		DATUM: A.H.D.	ISSUE	SHEET SIZE
5th Floor 17 RANDLE STREET		DRAWN: AK/WP	2	A1
SURREY HILLS N.S.W. 2010		REF. 130914	DWG. I.D.:	
PH. (02) 9212 4655 FAX (02) 9212 5254		No.: DETAIL		

X:\13\JOBS\130914 Sydney CBD\Footpath Detail Survey\130914--Detail.dwg

ANNEXURE D – DEVELOPERS WORKS

The design and construction of the Developer's Works to the extent as identified on the plans including but not limited to:

- Demolition, excavation and remediation
- Construction of kerbs, gutters, stairs, ramps, pavements and other associated infrastructure
- Installation and adjustment of any essential utility services
- Installation of localised stormwater drainage as required
- Installation of lighting to the City's standards
- Installation of CCTV to the City's standards
- Installation of soft landscaping
- Treatment of soffits
- Installation of blast wall (if required)
- Installation of public art

55 Pitt St
Voluntary Planning Agreement
Annexure D - Developer's Works
Revision 02/06/2020

Through Site Link Works by Mirvac

- Works generally include:
- Hard and soft landscaping
 - Lighting upgrades
 - Security cameras
 - Blast wall (if required)
 - Public art to blast wall

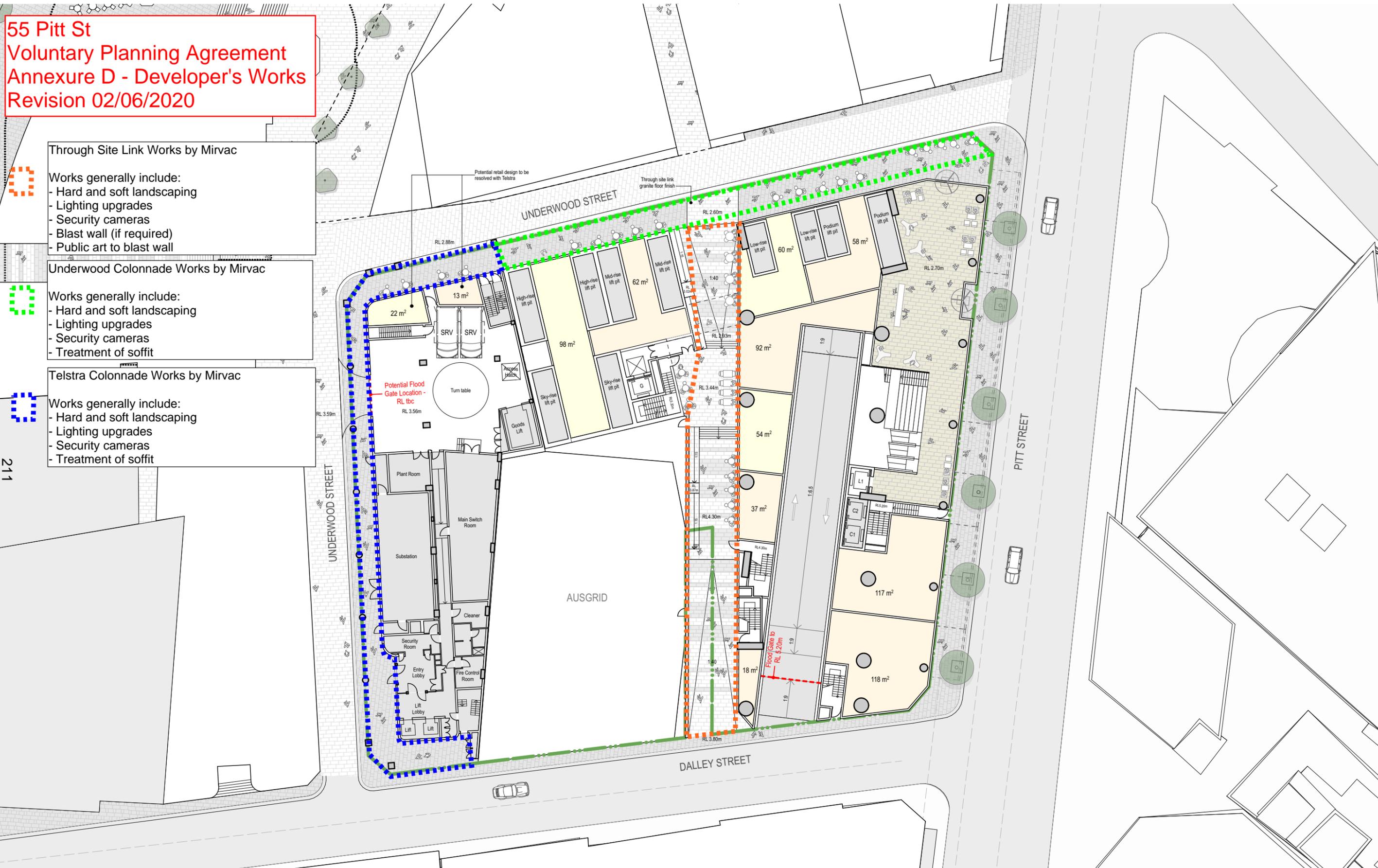
Underwood Colonnade Works by Mirvac

- Works generally include:
- Hard and soft landscaping
 - Lighting upgrades
 - Security cameras
 - Treatment of soffit

Telstra Colonnade Works by Mirvac

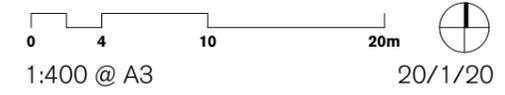
- Works generally include:
- Hard and soft landscaping
 - Lighting upgrades
 - Security cameras
 - Treatment of soffit

211



Public Domain Plan (within 4-6m Pitt Street Setback Envelope)

Mirvac - 55 Pitt Street



ANNEXURE E – PROPOSED PUBLIC EASEMENT AND STRATUM PLAN

Proposed Public Easement & Stratum Plan

Drawing Revision: 28/08/20

Legend:

Mirvac Colonnade - External footpath areas to be dedicated to CoS by way of stratum subdivision per 55 Pitt Street VPA drafting. Refer following pages for section and elevation depicting heights

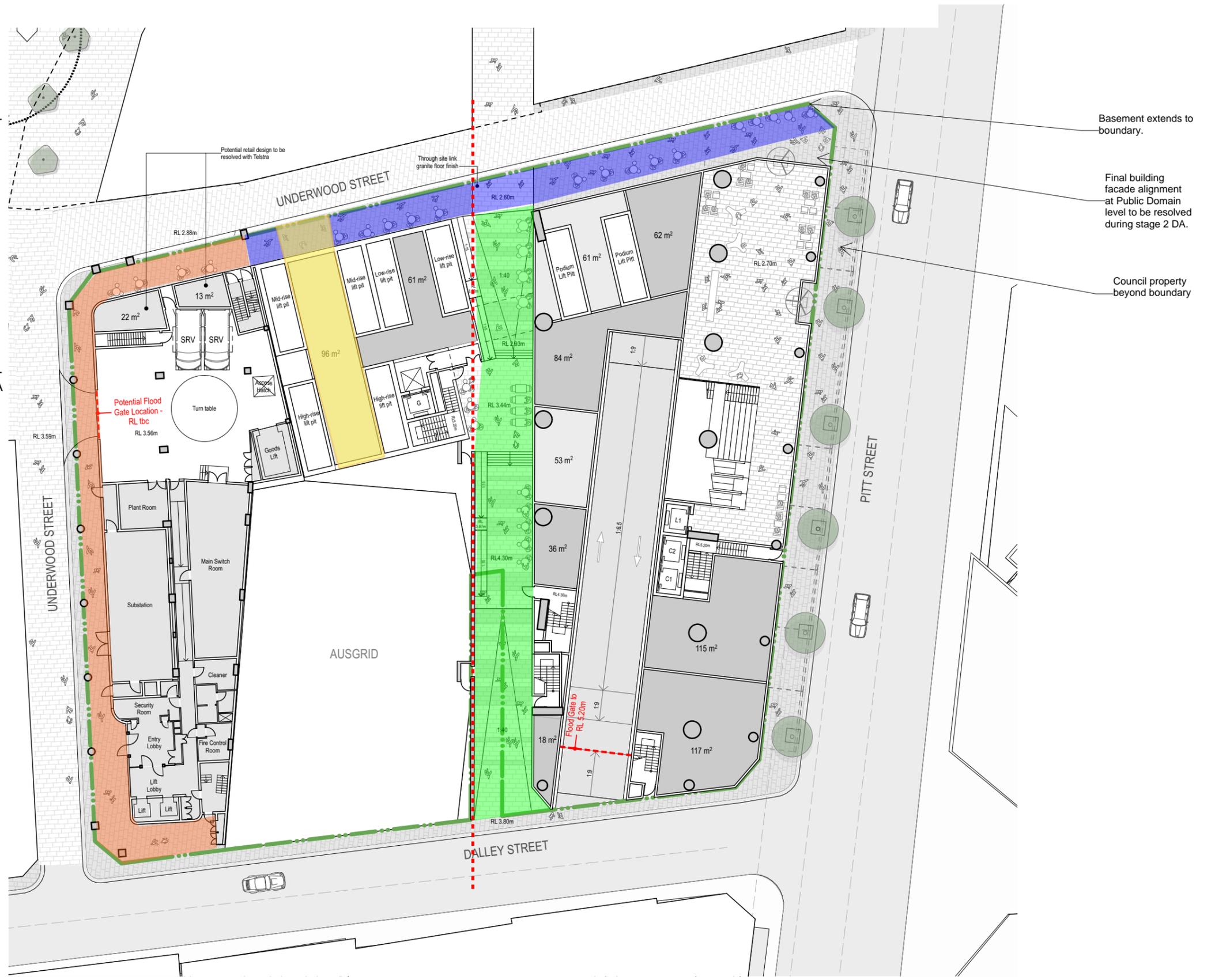
Telstra Land - External footpath areas to have public access easement registered on titles per 55 Pitt Street VPA drafting. Easement to extend to match the same height as existing colonnade soffit (height varies). Refer following pages for section that depicts easement heights.

Through Site Link On Queens Court, Ausgrid Land, Mirvac Land - External footpath areas to have public access easement registered on titles per 55 Pitt Street VPA drafting. Easement to extend to 4m above FFL

Refer following pages for long elevation that depicts easement heights.

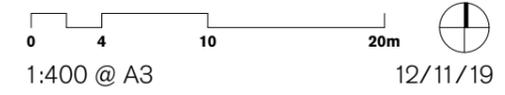
213
Blast wall alignment

Easement for electricity purposes



Public Domain - Indicative design

Mirvac - 55 Pitt Street



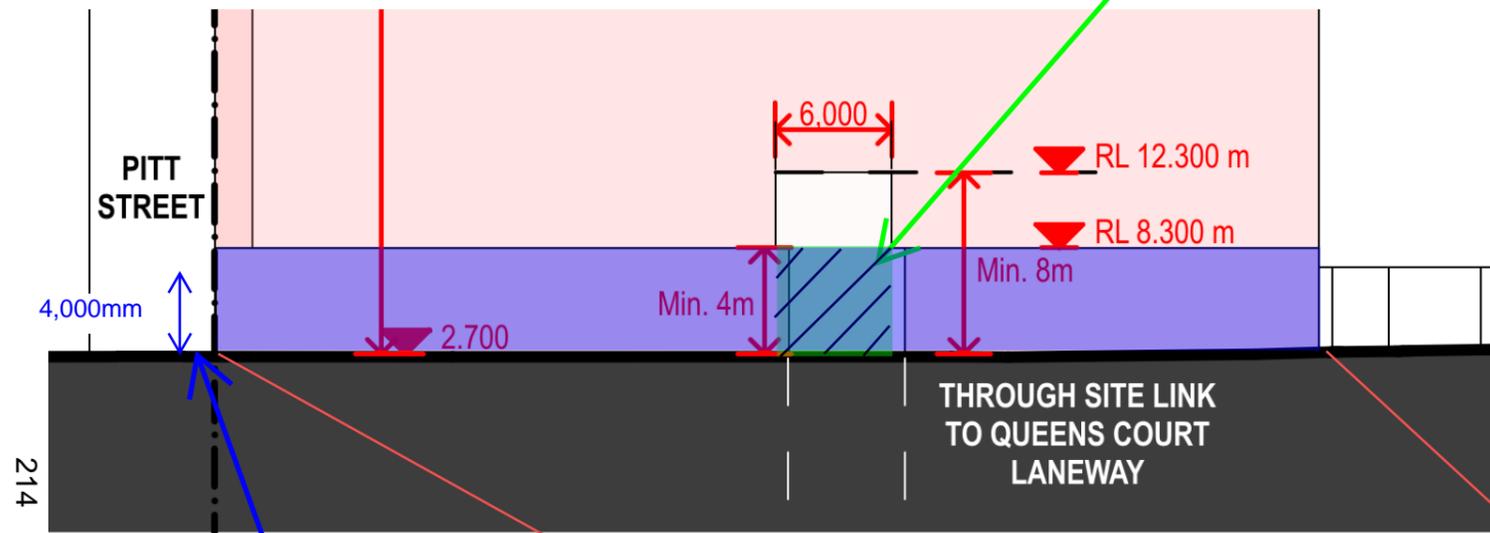
Proposed Public Easement & Stratum Elevation - Mirvac Colonnade

Envelope Elevation North

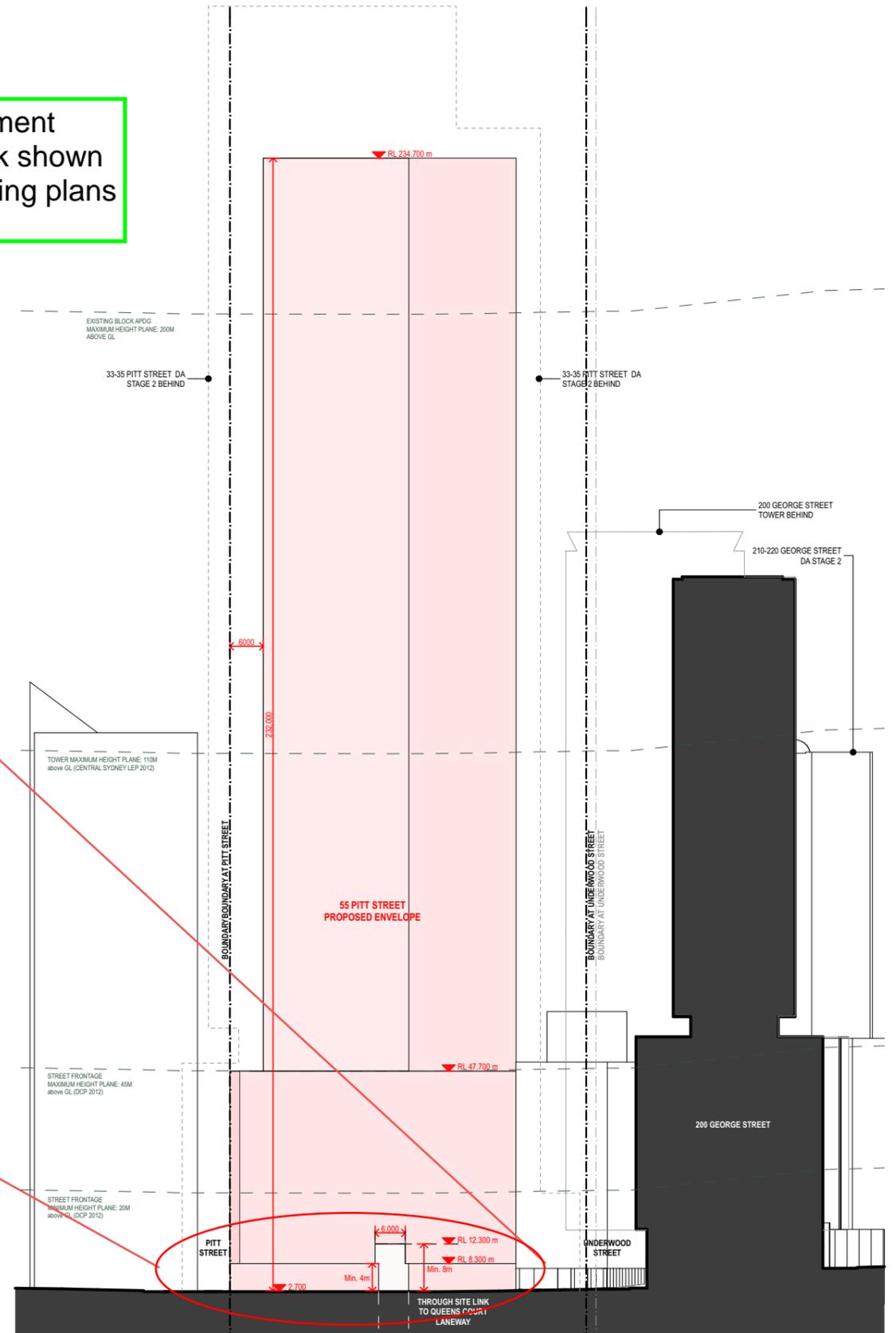
Legend:

External footpath areas to be dedicated to CoS by way of stratum subdivision per 55 Pitt Street VPA drafting.

Public access easement over through site link shown behind. Refer following plans for extent.



CoS Stratum subdivision to extend minimum 4,000mm above finished paving level.



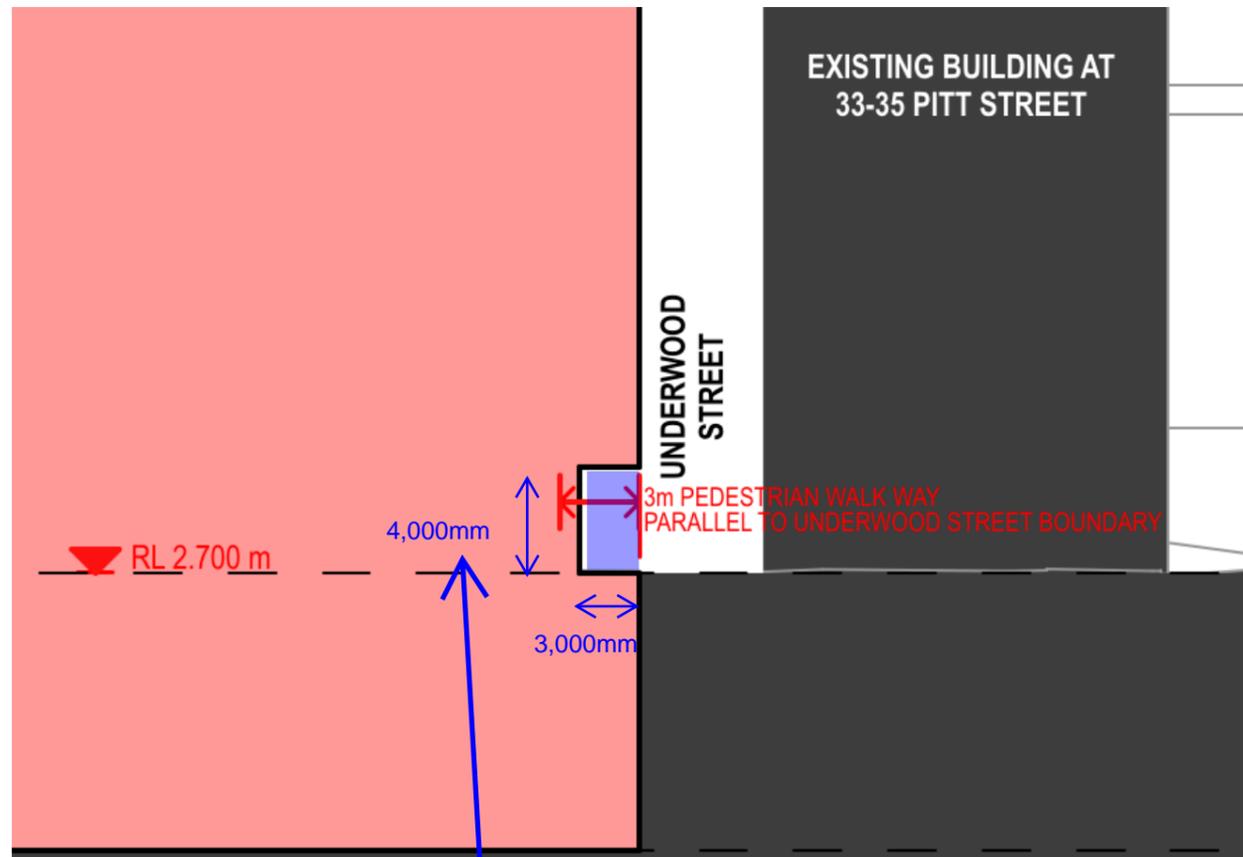
Proposed Public Easement & Stratum Section - Mirvac Colonnade

Envelope Section C South-North

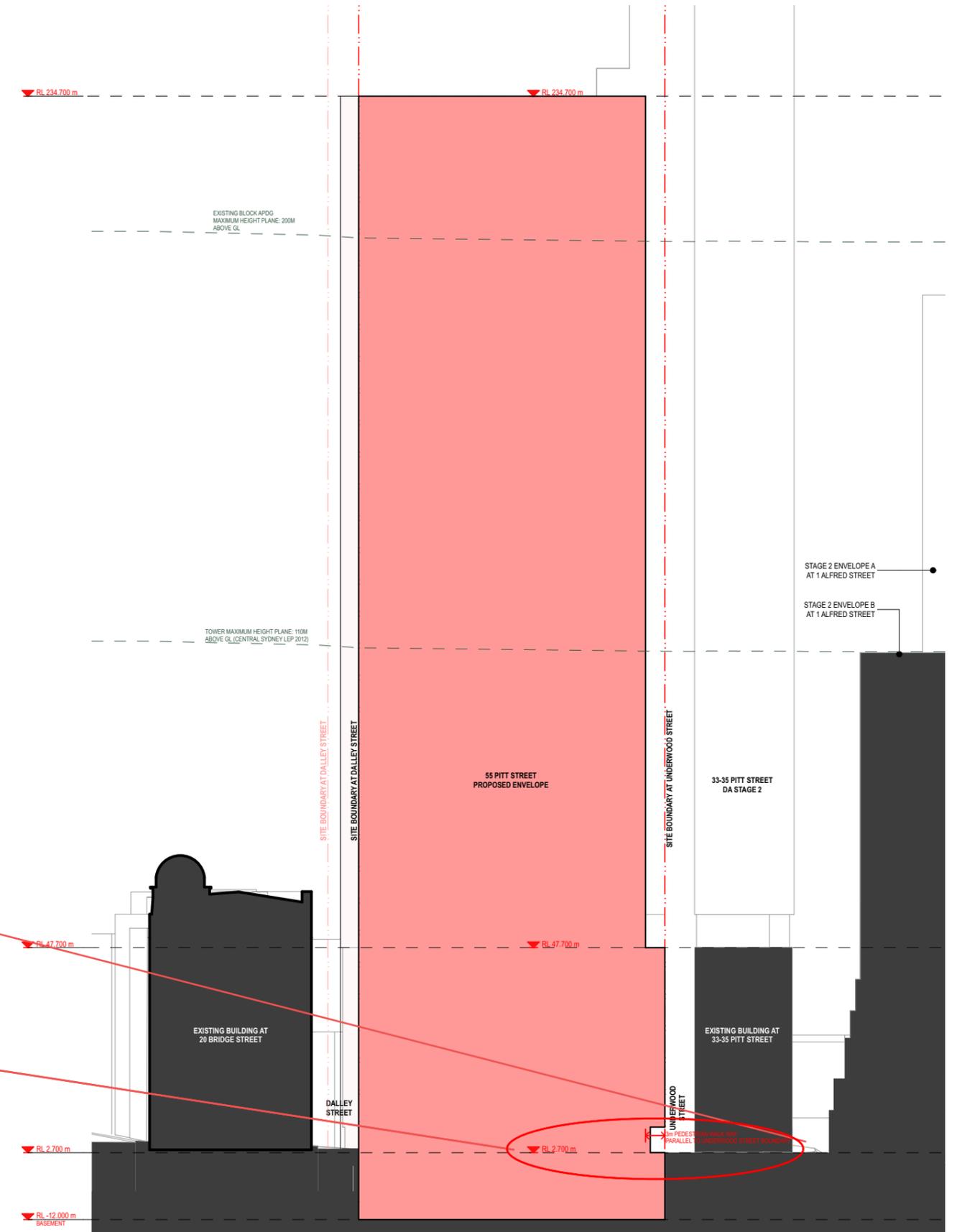
Legend:

External footpath areas to be dedicated to CoS by way of stratum subdivision per 55 Pitt Street VPA drafting.

215



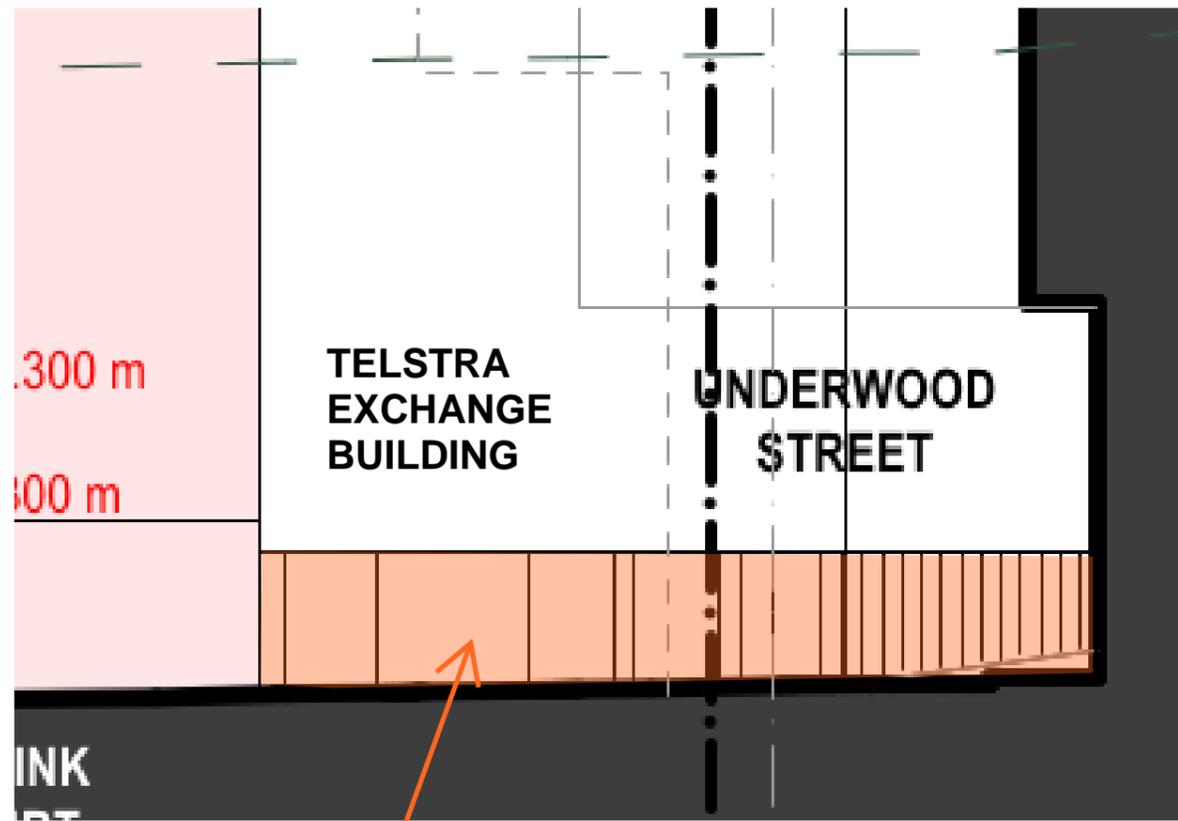
CoS Stratum subdivision to extend minimum 4,000mm above finished paving level.



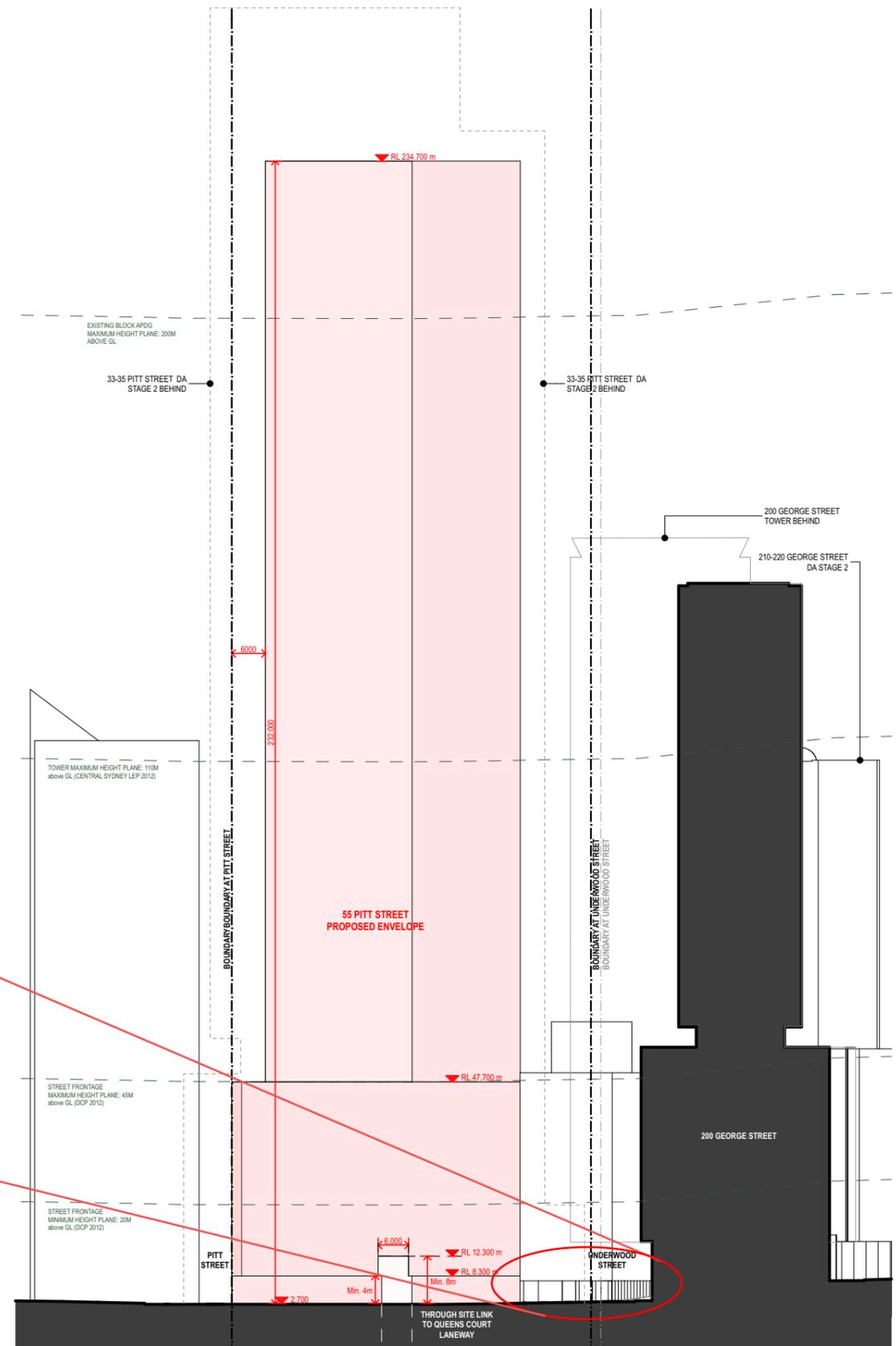
Proposed Public Easement & Stratum Section - Telstra Land

Envelope Elevation North

216



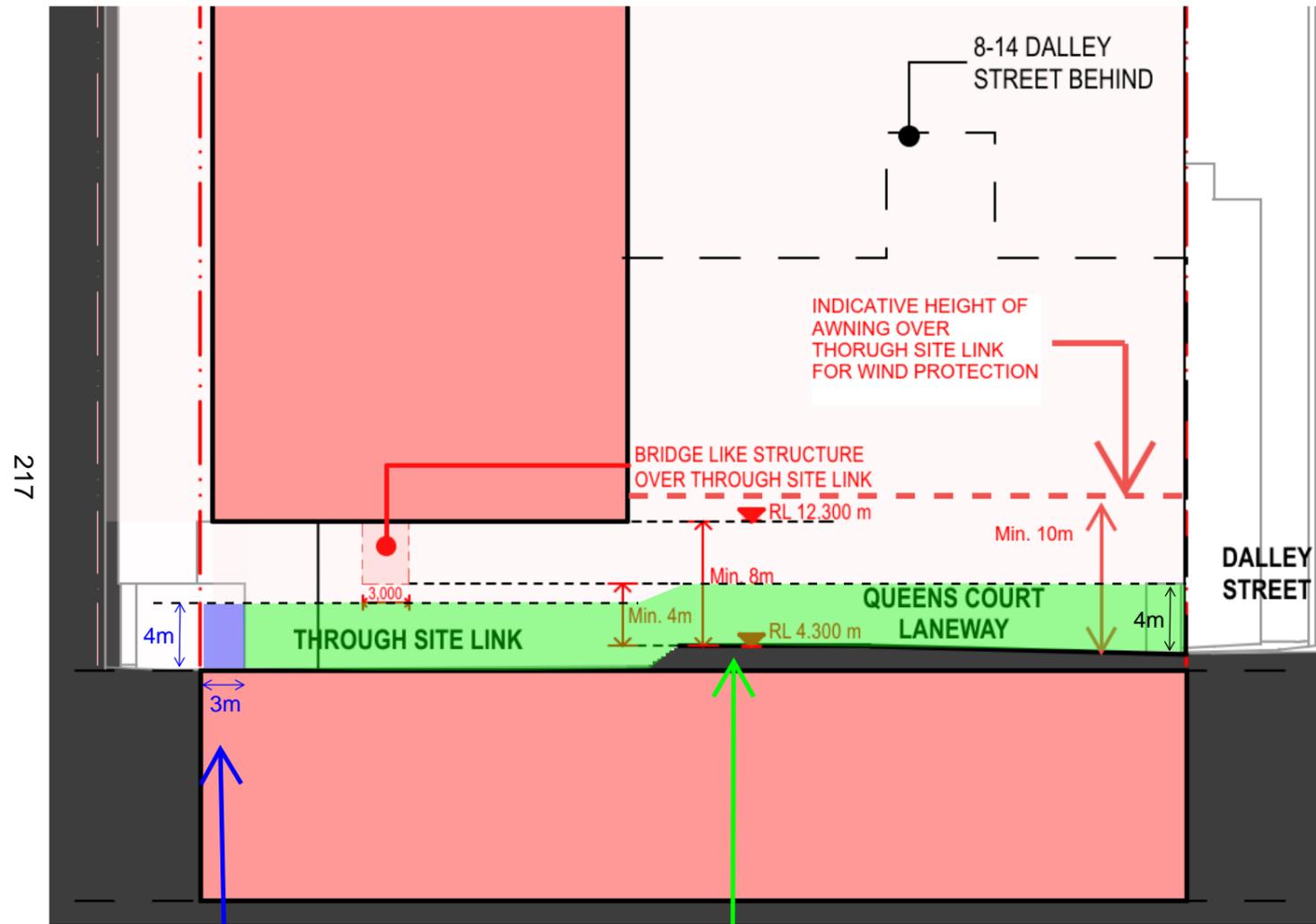
Public easement to extend to height of existing Telstra Colonnade soffit. Height varies.



Proposed Public Easement & Stratum Section - Through Site Link

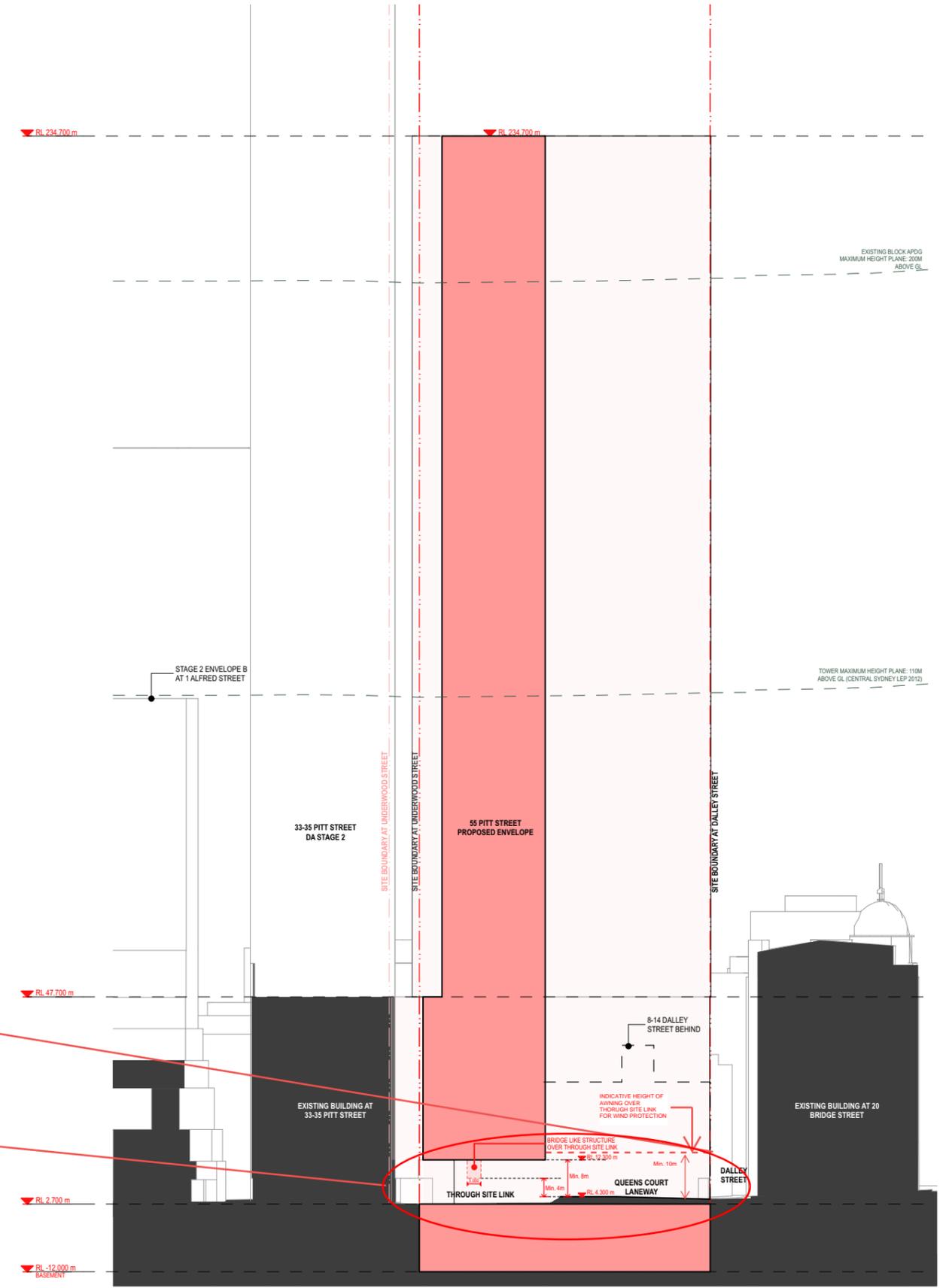
Envelope Section D North-South

Through Site Link



CoS Stratum subdivision on Mirvac Colonnade. Refer previous plans for extent.

Public access easement over through site link. Min 4m above FFL.



ANNEXURE F -BLAST WALL CONTRIBUTION AND PLANS

1. The City acknowledges that following a detailed assessment by Ausgrid and Mirvac and in consultation with the City, a blast wall may be determined to be required by Mirvac and Ausgrid in their absolute discretion on the relevant elevation to the Substation to facilitate a pedestrianised thru site link along Queen's Court.
2. Where a blast wall is determined to be required by Mirvac, Mirvac agrees to install public art to the face of the new blast wall along its full extent at a cost no less than the cost equal to the **Blast Wall Contribution Amount**.
3. The Blast Wall Contribution Amount=**Council Compensation Contribution + Mirvac Contribution**.
4. **Council Compensation Contribution** means:
 - (a) The Gross Building Area (**GBA**) Blast Wall Zone that the vertical component of the Blast Wall occupies in plan view, that encroaches on Queen's Court. The GBA Blast Wall Zone will be measured in plan view. It is the width of the Blast Wall in plan multiplied by length of the Blast Wall in plan but excluding:
 - the footing width or slab area that supports the blast wall below a depth of 500mm.
 - the steel support structure that may be required to span back to the Mirvac Land across Queens Court as shown in Annexure F.
 - (b) The GBA Blast Wall Zone will be multiplied by an agreed Blast Zone Rate of \$120,000/m² (plus any adjustment for CPI indexation)

Therefore:

The Blast Wall Contribution shall be calculated as follows:

Council Compensation Contribution =

(GBA Blast Wall Zone

x

Blast Zone Rate)

- The City will contribute this amount that would otherwise be payable by Mirvac to the City for the Blast Wall Easement towards the Blast Wall Contribution as set out below.

5. **Mirvac Contribution** is as follows:

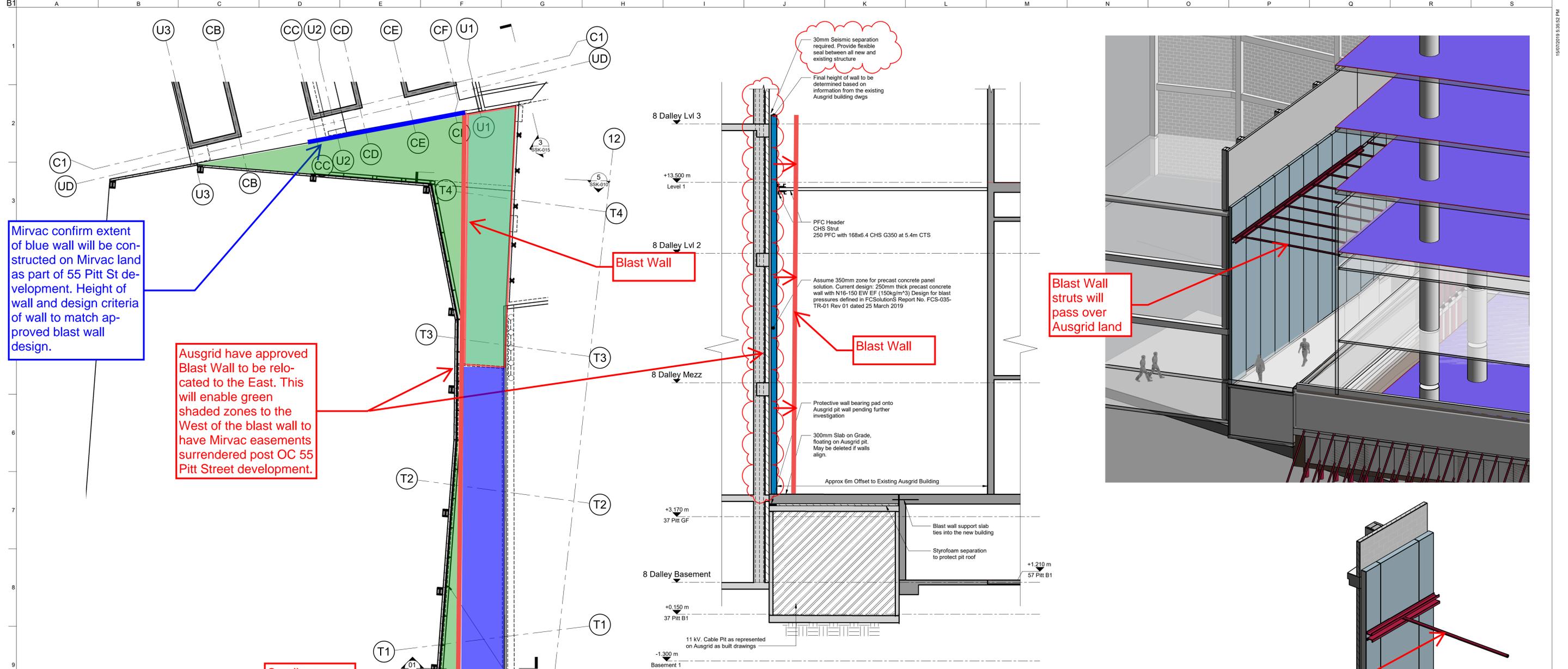
- (a) The Mirvac Contribution will equal the Council Compensation Contribution.
- (b) Mirvac will contribute this amount to the Blast Wall Contribution as set out above.
- (c) Should the public art be affixed to the Blast Wall the Mirvac Contribution will be for the public art component of the wall only and not the substructure that supports the wall.

Notes:

- **Calculation Example:**
- Blast Wall thickness = 0.35m (excludes footings 500mm below finished surface level, all bridging slabs over existing assets, structural steel bracing supports across Queens court at high level)
- Blast Wall length = 24m

- Blast Wall Zone = 8.40m²
- Blast Wall Zone Rate = \$120,000/m²

- Blast Wall Contribution Amount for public art = 8.4 x 120,000 = **\$1,008,000 + adjusted for CPI indexation**



Mirvac confirm extent of blue wall will be constructed on Mirvac land as part of 55 Pitt St development. Height of wall and design criteria of wall to match approved blast wall design.

Ausgrid have approved Blast Wall to be relocated to the East. This will enable green shaded zones to the West of the blast wall to have Mirvac easements surrendered post OC 55 Pitt Street development.

Small return may be required. Subject to detailed design.

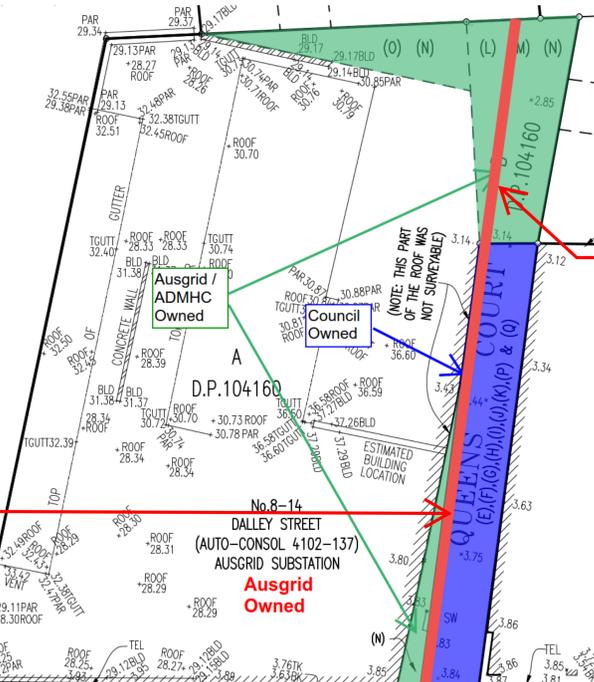
Localised doors in to lane (2 of) to be blast resistant. Design of doors to comply with EN 13123/124-1 performance level EPR1. Refer product Gunnebo BasTek AT100-S. Door Size approx 900mm x 2100mm.

Annexure 5
SSK 038 - Blast Wall Plan
Revision 02
Date: 19/08/19

- Ausgrid / ADMHC Owned
- Council Owned

- Notes:**
- Egress from 2 x fire doors to be maintained from Ausgrid substation.
 - Blast Wall to be designed in such a way it can be removed post OC of 55 Pitt St.
 - Blast wall above approved in concept by Ausgrid.
 - Detailed design phase to be completed.
 - Blast wall alignment shall have western face of Blast Wall aligned with Western edge of Council owned Queens Court.

Section 01
Scale 1 : 50 SSK-031



Rev	Date	By	Chkd	Appd
C	15/07/19	IR	JM	F
Revised option 4				
B	12/04/19	IR	JM	F
Revised option 4				
A	26/10/18	CAL	CAL	C
Revised for overpressure estimates of 8kPa				

Rev	Date	By	Chkd	Appd
C	15/07/19	IR	JM	F
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B	12/04/19	IR	JM	F
Revised option 4				
A	26/10/18	CAL	CAL	C
Revised for overpressure estimates of 8kPa				

100 George Street SW 2000.	IC	As indicated
tt Street osed re-development, ey	Option 4 - Loads from FCSolutions	Role: Structural
		Subsidiary: Preliminary Sketch
		Project No: 258518
		Rev: C



- (A) - EASEMENT FOR ELECTRICITY PURPOSES (K953021)
- (B) - EASEMENT FOR ELECTRICITY PURPOSES (Q254110)
- (C) - EASEMENT FOR ELECTRICITY PURPOSES 2.745 WIDE (M838242)
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- (P) - EASEMENT FOR ELECTRICITY SUPPLY PURPOSES (GOV. GAZETTE No. 105)
- (Q) - RIGHT OF WAY (CONV. No.134 BOOK1210)
- (R) - LAND BENEFITTED BY RIGHT OF WAY (C700936), RIGHT OF CARRIAGEWAY (D.P.267949) AND RIGHT OF FOOTWAY (D.P.267949)

NOTES:

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- ADJOINING BUILDINGS AND DWELLINGS HAVE BEEN PLOTTED FOR DIAGRAMMATIC PURPOSES ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY.
- THE SPREAD & HEIGHT OF EACH TREE IS INDICATIVE ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY.

Area	Owner	Easement Beneficiary
Queens Court	Council (default)	Mirvac Ausgrid
Area B	Ausgrid	Mirvac
Area Marked With Easement	Ausgrid	Mirvac
"N"		

Blast Wall Zone Example
(shown as indicative area only for the purpose of providing an example)

The Blast Wall Zone = The area the Blast Wall occupies in plan view on Council Land

- LEGEND**
- BB - BOTTOM OF BANK
 - BK - BOTTOM OF KERB
 - BW - BOTTOM OF WALL
 - CL - CENTRE LINE
 - D - DOOR
 - DIP - DOWN PIPE
 - EJUB - ELECTRICITY JUNCTION BOX
 - FL - FLOOR LEVEL
 - G - GUTTER
 - GPT - GROSS POLLUTANT TRAP
 - HYD - HYDRANT
 - IL - INVERT LEVEL
 - K - KERB
 - LP - LAMP POST
 - MH - MANHOLE
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 - PP - POWER POLE
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 - RR - ROOF RIDGE
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 - SGN - SIGN
 - SLH - SEWER LAMP HOLE
 - SMH - SEWER MANHOLE
 - SV - STOP VALVE
 - SW - STORM WATER
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 - TELP - TELSTRA PILLAR
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 - TLCB - TRAFFIC LIGHT CONTROL BOX
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 - VC - VEHICLE CROSSING
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DATE	BY	REVISION	ISSUE
24.02.17	TM/JJ	ADDITIONAL ROOF DETAIL	2
29.10.13	AK/WP	ORIGINAL ISSUE	1

PLAN SHOWING SELECTED DETAIL AND LEVELS AT UNDERWOOD, DALLEY AND PITT STREETS SYDNEY

CONSULTING SURVEYORS		RATIO: 1:200	DATE	
DENNY LINKER & CO.			23.05.2018	
SYDNEY		DATUM: A.H.D.	ISSUE	SHEET SIZE
5th Floor 17 RANDLE STREET		DRAWN: Mirvac	2	A1
SURRY HILLS N.S.W. 2010		Drawing Number: Mirvac001		
PH. (02) 9212 4655 FAX (02) 9212 5254		Drawing Title: Blast Wall Zone		

ANNEXURE G – DEED OF NOVATION

Deed of Novation

THIS DEED OF NOVATION is made on _____ between the following Parties:

1. **The Council of the City of Sydney ABN 22 636 550 790** of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (“**Council**”), and
2. **[Insert Name, ACN and address]** (**[jointly]**), the “**Outgoing Party**”, and
3. **[Insert Name, ACN and address]** (“**Incoming Party**”).

BACKGROUND

- A. The Council and the Outgoing Party are Parties to the VPA.
- B. The VPA relates to the whole of the Land.
- C. The Outgoing Party wishes to transfer the **[Land/part of the Land]** to the Incoming Party.
- D. The Incoming Party agrees to perform the obligations and seeks to obtain the benefits of the Outgoing Party under the VPA.
- E. The Outgoing Party and the Incoming Party have agreed to enter into this Deed of Novation, in accordance with clause 13.2 of the VPA, at the request of the Council.

1. Definitions and Interpretation

VPA is the Planning Agreement entered into between the Council and the Outgoing Party on **[date]**.

1.1 Definitions

Words and expressions defined in the VPA have the same meaning in this Deed.

1.2 Headings

Headings do not affect the interpretation of this document.

2. Performance of Obligations

2.1 Incoming Party

On and from the date of this Deed, the Incoming Party:

- (a) is substituted for the Outgoing Party as a party to the VPA and acknowledges itself to be bound by the provisions of the VPA, as if the Incoming Party had originally been named as the Outgoing Party in that VPA;
- (b) without limiting clause 2.1(a), must punctually carry out and perform all other obligations of the Outgoing Party under the VPA which are not performed at the date of this Deed; and
- (c) will be:
 - (i) entitled to the benefit of the VPA; and
 - (ii) entitled to enforce the VPA against Council,

as if the Incoming Party had originally been named as the Outgoing Party in that VPA.

2.2 Notices

The Council must address all notices and communications to be given or made by it to the Incoming Party under the VPA to the following address:

[Insert Incoming Party address]

3. Performance affected by novation

3.1 Performance by Outgoing Party

The Outgoing Party:

- (a) (subject to clause 3.3 of this Deed) releases and discharges Council from its obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA prior to the date of this Deed; and
- (b) warrants to the Council that it has properly performed its obligations under the VPA up to and including the date of this Deed, complying with all contractual requirements.

3.2 Developer's obligations

The Incoming Party must perform all of the Developer's obligations under the VPA as if named as the Developer, whether or not the relevant obligations relate to works that were to be performed prior to the date of this Deed, including the delivery of all Public Benefits to Council.

3.3 Release by Council

Council releases and discharges the Outgoing Party from all of its obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA that arise.

4. Governing Law

This deed is governed by the laws of New South Wales.

5. Further acts

Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

6. Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

EXECUTED as a DEED

Signed, sealed and delivered for the
COUNCIL OF THE CITY OF SYDNEY by
its duly authorised officer, in the presence
of:

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000

Address of witness

Executed by [Outgoing party] in accordance)
with section 127 of the Corporations Act)
)

Signature of Director/Secretary

Signature of Director

Name of Director/Secretary

Name of Director

Executed by **[INSERT INCOMING PARTY**)
NAME AND ACN] in accordance with section)
127 of the Corporations Act:)

Signature of Director/Secretary

Signature of Director

Name of Director/Secretary

Name of Director

ANNEXURE H - CONSENT FOR ACCESS FOR WORKS – QUEENS COURT

**CONSENT AND CONDITIONS OF USE UNDER SECTION 138 OF THE ROADS
ACT 1993**

For the Road known as Queens Court

**Mirvac Capital Pty Ltd as trustee for the Mirvac Pitt Street Trust ABN 19 326
659 400;**

and

**Mirvac Commercial Sub SPV Pty Ltd as Trustee for Mirvac Pitt Street Trust
No.2 ABN 14 958 651 710**

Consent and Conditions of Consent under Part 9, Division 3 of the *Roads Act 1993 (NSW)*

The Council of the City of Sydney (**City**) grants consent under Part 9, Division 3 of the *Roads Act 1993 (NSW)* to the person or entity named in Item 2 (**Operator**) on the conditions set out in this consent.

Background

- A. The City is the roads authority in relation to the Road in accordance with the provisions of the *Roads Act 1993 (NSW)*.
- B. The Operator has sought the consent of the City to carry out the Works and to use the Road for the Permitted Use during the Consent Period.
- C. The City agrees to grant consent under Part 9, Division 3 of the *Roads Act 1993 (NSW)* to the Operator to carry out the Works and to use the Road for the Permitted Use during the Consent Period on the conditions set out in this consent.

Operative part

1. Definitions and interpretation

1.1 Definitions

In this consent:

Act means the *Roads Act 1993 (NSW)*.

Approval means any certificate, licence, consent, permit, approval or other requirement of any legislation or any Authority having jurisdiction in connection with the Works or the Permitted Use.

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

Business Day means a day on which banks are open for general banking business in New South Wales, but does not include Saturdays, Sundays or public holidays.

Commencing Date means the date in Item 6(b).

Consent means the consent granted to the Operator pursuant to clause 2.1 of this consent.

Consent Period means the period commencing as the Commencing Date and expiring on the Terminating Date, and includes any period of holding over pursuant to clause 2.2.

GST means goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Insolvent means:

- (a) for an individual:
 - (1) becoming bankrupt;
 - (2) taking or trying to take advantage of Part X of the *Bankruptcy Act 1966 (Cth)*;
 - (3) making an assignment for the benefit of creditors; or
 - (4) entering into a composition or arrangement with creditors; and

- (b) for a corporation:
- (1) being insolvent within the meaning of the *Corporations Act 2001 (Cth)*;
 - (2) being wound up or subject to an order for winding up or reconstruction;
 - (3) being placed in liquidation or under official management;
 - (4) having a receiver, provisional receiver or receiver and manager of any of its assets or an administrator appointed; or
 - (5) having an external party appointed to control its affairs.

Item means an item in Schedule 1.

Operator's Employees means each of the Operator's employees, officers, agents, contractors, licensees and invitees.

Operator's Property means all plant, equipment, fixtures, fittings, furnishings and other property on or installed on the Road, by or on behalf of the Operator, or owned or leased by the Operator on the Road and includes any alterations to the Road and the Operator's Property made by or on behalf of the Operator.

Permitted Use means the permitted use in Item 4.

Person Conducting a Business or Undertaking has the same meaning as in the WHS Law.

Plan means the plan of the Road annexed to this consent as Annexure A.

Road means the area described in Item 3 and includes the City's fixtures, fittings, plant and equipment located on the Road and identified on the Plan.

Principal Contractor has the same meaning as in the WHS Law.

Services means any services provided to the Road by an Authority or the City (for example communication, drainage, power, fire and emergency services, garbage removal, gas, heating, sewerage, telephone, trade waste and water) and the pipes, wires, ducting and other means of providing those services to the Road.

Terminating Date means the date in Item 6(c).

Voluntary Planning Agreement means the planning agreement between the City and the Operator registration number [drafting note – to be inserted when Consent is entered].

WHS Law means the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2011 (NSW)*

Works means the works specified in item 5.

1.2 Interpretation

In this consent:

- (a) "include" (in any form) when introducing a list of items does not limit the meaning of the words to which the list relates to those items or items of a similar kind;
- (b) "month" means calendar month;
- (c) references to the City and Operator include their executors, administrators, trustees, successors and permitted assigns, agents, officers, employees, customers, contractors, licensees and invitees;

- (d) references to any statute, ordinance or other law include all regulations and other instruments under it and all consolidations, amendments, re-enactments or replacements of it;
- (e) if more than 1 person or company is named as Operator, they are jointly and severally liable; and
- (f) if a notice is required it must be in writing and served on a Business Day.

1.3 Consent subject to the provisions of the Roads Act 1993

The Operator acknowledges that the Consent is subject to the provisions of the Act, including but not limited to Part 9, Division 3 of Act.

1.4 Consent subject to the provisions of the *Environmental Planning and Assessment Act 1979 (NSW)*

The Operator must ensure that all necessary development consents under the *Environmental Planning and Assessment Act 1979 (NSW)* in respect of the Works and the Permitted Use are in place and operative at all times during the Consent Period, and that the *Environmental Planning and Assessment Act 1979 (NSW)* is complied with at all times during the Consent Period.

2. Consent and Consent Period

2.1 Consent

In consideration of the payment by the Operator to the City of the Consent Fee, the City consents to the Operator carrying out the Works and using the Road for the Permitted Use during the Consent Period.

2.2 Holding over

- (a) The Operator may hold over on the terms of this consent after the Terminating Date, with the City's prior written consent, on a monthly basis and in consideration of payment of a consent fee, the amount and frequent of which is to be determined by the City (if any). The Operator acknowledges that the Road may not be available for the Operator to occupy after the Terminating Date.
- (b) The terms and conditions of this consent apply during any holding over period, with such amendments as are necessary to make them applicable to a monthly consent period.
- (c) During any period of holding over either party may end this consent by giving the other party at least one month's written notice.

2.3 Further Consent

Subject to legislation, and provided the Operator has not breached any of the conditions of this consent, the City will at the end of the term of this consent, extend the term of the Consent for a further period of 5 years, on application from the Operator for a further 5 year term.

3. Payment of Consent Fee and other payments

3.1 Payment of Consent Fee

The Operator must pay the Consent Fee in the amount set out in Item 8 on or before execution of this consent.

3.2 Other Payments

The Operator must pay all charges for Services relating to the Operator's use of the Road and costs incurred by the City in granting this consent.

4. Use and care of the Road

4.1 Operator's obligations prior to commencing the Works

- (a) The City makes no representations to the Operator as to the existence or otherwise of pipes, cables or other infrastructure beneath the surface of the Road. The Operator must make its own investigations in relation to any consent required from the owner of any such assets and must repair and/or replace to the satisfaction of the City and the asset owner any such assets damaged or displaced during the course of the Works or the Permitted Use.
- (b) The Operator accepts the condition of the Road on the Commencing Date.
- (c) Prior to commencement of the Works, the Operator must comply with the "Dial Before You Dig" legislation, being the Electricity Supply Act 1995 (NSW) and the Gas Supply Act 1996 (NSW), and the relevant regulations made pursuant to those acts and take such other precautions as are prudent to notify underground infrastructure asset owners of the intended works to carry out the Works and the Permitted Use.
- (d) The Operator must comply with the reasonable requirements of the owner of any assets located on or beneath the surface of the Road in relation to the Works.
- (e) The Operator will, before carrying out the Works, submit to the City a detailed project plan in respect of the Works, which includes an indication on timing for completion of the Works (**Project Plan**). The Operator must notify the City immediately if it becomes aware that the Works are unlikely to be completed in accordance with the Project Plan.
- (f) The City grants the Consent over the Road in their existing layout and condition and subject to any encumbrances or restrictions affecting the Road. The City gives no warranty as to the use to which the Road may be put. The Operator has entered into this consent with full knowledge of, and subject to, any restriction on the use of the Road.
- (g) Prior to commencing the Works, the Operator must:
 - (i) obtain all necessary consents and Approvals at its own cost; and
 - (ii) obtain any other applicable consents from adjoining land owners in respect of the Works or the Permitted Use.

4.2 Operator's obligations during construction of the Works

- (a) The Works must be constructed and completed as soon as reasonably practicable during the Consent Period, in accordance with the Project Plan and in a manner which will:
 - (i) cause as little inconvenience to users of the Road and any adjoining land as is practicable given the nature of the Works;
 - (ii) ensure the safety of users of the Road, including but not limited to:
 - (A) erecting and maintaining suitable warning signage and safety barriers in relation to any excavations;

- (B) ensuring that the Works are reasonably lit, having regard to existing lighting in the vicinity, to give visibility to any potential danger;
- (iii) not damage any of the City's assets, infrastructure or land except to the extent necessary to carry out the Works and with the City's prior written approval (which may be given or withheld at the City's discretion and may be subject to conditions regarding make good of the damaged area); and
- (iv) not damage land adjoining the Road, whether or not owned by the City.

4.3 Nature of Works

- (a) The Works must be undertaken:
 - (i) on the Road only, unless otherwise agreed by the parties in writing;
 - (ii) in accordance with any all necessary consents or Approvals;
 - (iii) at the Operator's expense;
 - (iv) in accordance with all applicable standards relating to the construction of the Works. Such standards include, but are not limited to, work, health and safety standards, the relevant Australian Construction Standards and compliance with the City's codes applicable to works being done on public roads;
 - (v) in a safe, proper, efficient and workmanlike manner using reputable and appropriately qualified contractors;
 - (vi) to the extent possible, keeping the Road clean, tidy and in good repair;
 - (vii) in accordance with all rules and requirements of any Authority having jurisdiction over the Road including any applicable development consents;
 - (viii) to the City's reasonable satisfaction, in accordance with the City's reasonable requirements; and
 - (ix) to the extent possible to minimise the impact on the surrounding environment.
- (b) The Operator's Property will at all times be and remain the property of the Operator.
- (c) The Operator may close any part of the Road temporarily for safety reasons to enable the Works to be carried out, provided that the Operator:
 - (i) erects hoardings or other suitable barriers around the work site to prevent access by members of the public; and
 - (ii) maintains reasonable pedestrian access around the Works.

4.4 After construction of the Works

- (a) Upon completion of construction of the Works, the Operator must provide to the City "works-as-executed" drawings of the Works which must include the depth below the surface of the Road or any part of the Works not visible above the surface of the Road.

- (b) Within one week of the completion of the installation of the Operator's Property, and within one month of each fifth anniversary of the Commencing Date, the Operator must submit to the City, a report from a qualified structural engineer, certifying that the Road and the Operator's Property are safe and structurally sound. This obligation ends when the public positive covenants are registered over the Road as contemplated in the Voluntary Planning Agreement.
- (c) The parties acknowledge and agree that the Works will comprise part of the Operator's Property and will be owned by the Operator.

4.5 No dangerous conduct

The Operator must not:

- (a) bring onto, store or manufacture any dangerous substances on the Road; or
- (b) breach any fire safety regulations applicable to the Road, the Works or the Permitted Use; The Operator is responsible for any increase in the cost of the City's insurance premiums as a result of the Operator's default.

4.6 Use for permitted use only

The Operator must:

- (a) use the Road only for the construction of the Works and the Permitted Use;
- (b) not allow the Road to be vacated, abandoned, or used for any other purpose;
- (c) obtain the written consent of the City (not to be unreasonably withheld considering what may be required to undertake the Permitted Use) before the Operator brings onto the Road any inflammable or explosive substances or any other hazardous materials, any heavy objects or anything likely to damage or overload the Road;
- (d) comply with the terms of all consents and Approvals at all times during the Consent Period;
- (e) comply with all laws and the requirements of all Authorities at all times during the Consent Period; and
- (f) use all reasonable endeavours to ensure that the Operator's Employees observe and comply with the Operator's obligations under this consent, where appropriate.

4.7 Work Health and Safety

For the purposes of the WHS Law, during the Consent Period when the Operator is occupying the Road for the purpose of carrying out the Works, carrying out repair and maintenance works, installing, removing or replacing the Operator's Property, the Operator agrees that:

- (a) the Operator has sole management and control of the Road and has sole responsibility for ensuring that the Road and the means of entering and leaving them are safe and without risks to health;
- (b) the City:
 - (i) appoints the Operator as principal contractor (as referred to in Chapter 6 of the *Work Health and Safety Regulation 2011 (NSW)*) in respect of any works to be carried out by or on behalf of the Operator on the Road to which a WHS Law applies; and
 - (ii) authorises the Operator to exercise whatever authority is necessary for the Operator to discharge the responsibilities of that appointment;

- (c) the Operator has management and control over those works, and must carry out those works in accordance with the requirements of the WHS Law;
- (d) the Operator must put in place adequate systems to assess and eliminate all hazards associated with those works and, if those hazards cannot be eliminated, the Operator must do everything reasonably practicable to ensure that the risks involved are adequately controlled and minimised; and
- (e) the Operator must:
 - (i) immediately comply with directions on safety issued by any relevant Authority or the City except where contrary to the Operator's WHS Law obligations;
 - (ii) give the City written notice of any risks to the health and safety of any person using the Road, immediately after becoming aware of those risks; and
 - (iii) give the City written notice of any notifiable incident (as defined in the WHS Law) that occurs on the Road, immediately after becoming aware of that incident.

4.8 Fully maintain

- (a) Subject to any works required to undertake the Permitted Use, the Operator must maintain and repair the Road (including any property owned by the City on the Road) and keep the Operator's Property at all times during the Consent Period in good repair, working order and condition and in accordance with the City's reasonable directions. The Operator must comply with this obligation at its own cost with the intent that no costs whatsoever in respect of the repair, maintenance or replacement of the Operator's Property shall be payable by the City, whether or not damage is caused to the Operator's Property by the public or other users of the Road.
- (b) The Operator must keep the Road free of dirt, rubbish, pests and vermin at all times.
- (c) If in the opinion of the City, acting reasonably and where not in conflict with the Permitted Use, the Road or the Operator's Property is damaged (including during construction of the Works) or falls into disrepair such that it should be repaired or replaced, including any offensive vandalism or graffiti on the Road or the Operator's Property, the City may serve written notice upon the Operator requiring such repair or replacement.
- (d) The Operator must undertake the necessary repair or replacement:
 - (i) if public safety is at risk because of such damage or disrepair, on an urgent basis; or
 - (ii) in any other case, as soon as practicable.
- (e) The rights and obligations under this consent are in addition to the Operator's obligations under section 142 of the Act.

4.9 Comply with notices

The Operator must comply with any notice served on it by the City requiring the repair of the Road or the Operator's Property in accordance with this consent (but except where the repair would be contrary to the Permitted Use or such other works required and approved under the Voluntary Planning Agreement) and, if the Operator fails to do so within a reasonable period, the Operator authorises the City to carry out the work and to recover the cost from the Operator as a debt payable on demand.

4.10 Alterations to the site

- (a) The Operator may, during the Consent Period, carry out works and alterations to repair, maintain, upgrade and replace the Operator's Property (**Repair Works**) and clauses 4.1 to 4.4 (inclusive) apply to the Repair Works as if the word "Works" in those clauses read "Repair Works".
- (b) The Operator may close any part of the Road temporarily for safety reasons to enable the Repair Works to be carried out, provided that the Operator:
 - (iii) erects hoardings or other suitable barriers around the work site to prevent access by members of the public;
 - (iv) maintains reasonable pedestrian access around the Repair Works;
 - (v) notifies the City of the required Repair Works and any proposed impact on the Road, including any restrictions or closures.

4.11 Essential services certification

If the City is prevented from or delayed in complying with any essential fire or other safety obligations under the *Environmental Planning and Assessment Act 1979 (NSW)* due to any act, neglect, default or use of the Road by the Operator, the City may require the Operator at the Operator's cost, to do those things necessary to enable the City to comply with that Act.

4.12 Nature of Use

- (a) The Operator expressly acknowledges and agrees that:
 - (i) the Consent does not give the Operator any right to exclusive possession or occupancy of the Road;
 - (ii) the City may use, or permit other parties to use, the Road, except for temporary periods where it is necessary for safety reasons or to conduct the Permitted Use to close parts of the Road to enable repair or maintenance of the Works in accordance with this consent;
 - (iii) members of the public may be permitted to use the Road, except for temporary periods where it is necessary for safety reasons or to conduct the Permitted Use to close parts of the Road to enable repair or maintenance of the Works in accordance with this consent;
 - (iv) the Consent will not create, or be construed as creating, any form of tenancy or other right or interest in or to the Road, other than a contractual right;
 - (v) the Consent does not constitute a lease at law and the Operator will not claim before a court or tribunal that the Consent constitutes a lease at law; and
 - (vi) if a court or tribunal determines that the Consent is a lease at law, the City may, at its option, terminate this consent by written notice to the Operator.
- (b) The Operator must permit the City and any relevant Authority to enter upon the Road with all necessary materials and equipment at all reasonable times and on reasonable notice (but at any time without notice in the case of an emergency) to:
 - (i) inspect the state of repair and condition of any services or utilities located with or passing through, under or above the Road; and

- (ii) carry out works (including repairs, additions, replacements or renovation) to any services or utilities located within or passing through, under or above the Road.
- (c) The City may suspend the Operator's use of the Road at any time if the City considers it necessary to enable the City or any Authority to carry out works in or around the Road.
- (d) The Operator must not make any claim for compensation or abatement or any other demand in relation to the entry onto the Road or the carrying out of works by the City any relevant Authority or the suspension of use under clauses this clause 4.12 or clause 4.13.
- (e) The Operator acknowledges and agrees that this consent, and the Operator's rights to occupy and use the Road under this consent, are subject to the rights of passage and access along public roads granted to members of the public under the Act, including under sections 5 and 6 and 143 of the Act.

4.13 Obstruction of the Road

Except to the extent it is reasonably required for the Permitted Use or the works approved in the Voluntary Planning Agreement, nothing in this consent:

- (a) will be construed as authorising the permanent obstruction of the Road; or
- (b) prevents the City from altering the levels of or reconstructing the Road.

4.14 Minimise Disruption

- (a) The Operator must not commit or allow any nuisance at the Road during the Consent Period.

5. Operator's insurance and indemnities

5.1 Required policies

The Operator must, at all times during the Consent Period, maintain policies of insurance for:

- (a) public liability insurance for an amount of not less than \$20,000,000 (or such other amount as the City reasonably prescribes) arising out of any one single accident or event;
- (b) damage to and loss of the Operator's Property;
- (c) workers compensation insurance required by law; and
- (d) professional indemnity insurance for no less than \$20 million until the date 7 years after the date of practical completion of the Works.

5.2 Requirements

All certificates of currency must:

- (a) be produced to the City for inspection before the Commencing Date and within two Business Days of demand (provided that demand cannot be made more often than once each year);
- (b) be placed with an insurer licensed by the Australian Prudential Regulatory Authority in Australia or with an investment grade rating from an industry recognised rating agency such as Moody's, Standard & Poor's or A M Best; and

- (c) except for any workers compensation or professional indemnity insurance policy, note the City as an interested party.

5.3 Release and Indemnity

- (a) The Operator occupies and uses the Road at its own risk and carries out the Works and the Permitted Use at its own risk and cost.
- (b) The Operator releases the City from any action, demand, cost, claim, liability or loss due to any damage, loss, injury or death occurring:
 - (1) in or around the Road;
 - (2) in connection with the Works or the Operator's use of the Road; or
 - (3) in connection with the existence of the Operator's Property on the Road, except to the extent that it is caused or contributed by the City.
- (c) During the Consent Period and except to the extent caused or contributed by the City, the Operator indemnifies the City against any action, demand, cost, liability or loss due to any damage, loss, injury or death caused or contributed to by:
 - (1) the Operator's deliberate, wilful or negligent act or omission;
 - (2) the Operator's breach of this consent;
 - (3) the Operator's use or occupation of the Road;
 - (4) the Works or the Permitted Use.

6. GST

- (a) If a party to this consent (**Supplier**) makes a supply under or in connection with this consent and is liable by law to pay GST on that supply, the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- (b) If this consent requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party is the amount of the Reimbursable Expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the Reimbursable Expense.
- (c) If a party to this consent has the benefit of an indemnity for a cost, expense, loss or outgoing (**Indemnified Cost**) under this consent, the indemnity is for the Indemnified Cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the Indemnified Cost.
- (d) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this consent.
- (e) Subject to the operation of this clause, all amounts stated in this consent are GST exclusive.

7. Role as a governmental agency

Nothing in this consent in any way restricts or otherwise affects the unfettered discretion of the City in the exercise of its statutory powers as a governmental agency.

8. Revocation and make good

8.1 Revocation under section 140 of the Act

In accordance with section 140 of the Act the City may revoke the Consent at any time and for any reason, by notice in writing served on the Operator.

8.2 Make good

- (a) Before the end of the Consent Period or within a reasonable period of any sooner determination of this consent, the Operator must at its own cost:
- (1) remove the Operator's Property from the Road and make good any damage caused by their removal;
 - (2) repair any damage to the Road caused by the Operator to the standard reasonably required by the City except where contemplated for the Permitted Use;
 - (3) vacate the Road and give it back to the City in a condition consistent with the Operator having complied with its obligations under this consent and the Act; and
 - (4) reinstate the Road to a clean and safe standard, reasonably required by the City;

unless such works are inconsistent with works required under the VPA.

9. Default

9.1 Events of default

If the Operator:

- (a) breaches a material obligation under this consent;
- (b) fails to perform any obligation under this consent and the breach or failure is not remedied within 10 Business Days of notice given by the City to the Operator requiring rectification of that breach or failure;
- (c) is Insolvent;
- (d) repudiates its obligations under this consent; or
- (e) commits a material breach of this consent which cannot be remedied,

the City is entitled to take the action referred to in clause 9.2.

9.2 Consequences of default

If clause 9.1 applies the City may:

- (a) revoke this consent by re-entry, by notice or by any other action available to it;
- (b) take any action it considers necessary or desirable in order to give effect to its rights under this consent;
- (c) elect to treat the conduct or failure to perform as a repudiation of this consent by the Operator;
- (d) recover from the Operator an amount equal to the damages or loss it sustains; and

- (e) apply any Bank Guarantee in reduction of its loss or damage.

The exercise of the City's rights under this clause does not affect any other rights the City may have at law.

9.3 No waiver

Acceptance by the City of any arrears of the Consent Fee, if applicable, or any other money, or of any breach of this consent by the Operator does not constitute a waiver of the City's rights.

9.4 Interest on overdue payments

If the Operator fails to pay any money by the due date for payment the Operator must pay interest calculated on a daily basis from the due date until the date of payment at the rate of interest which is 2% more than Westpac Banking Corporation's rate on overdraft accounts in excess of \$100,000 from time to time.

10. Costs

The Operator is responsible for:

- (a) both the City's and the Operator's legal costs in relation to the preparation, negotiation, finalisation and execution of this consent;
- (b) all out of pocket costs of the City to give effect to this consent;
- (c) all reasonable costs incurred by the City (including but not limited to legal costs) in respect of any amendment to, waiver under, variation or termination of this consent;
- (d) unless prohibited by statute, all reasonable costs incurred by the City (including but not limited to legal costs) in considering or acting on a request by the Operator; and
- (e) all reasonable costs incurred by the City (including but not limited to legal costs) in respect of any breach of this consent and the enforcement or protection, or attempted enforcement or protection of, any right under this consent.

11. Notices

All communications (including notices, consents, approvals, requests and demands) under or in connection with this consent:

- (a) must be in writing or sent by email;
- (b) must be addressed using the contact details for the relevant addressee as shown at the front of this consent (or as otherwise notified by the relevant addressee to each other party);
- (c) must be signed (which can be electronic) by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand, posted by prepaid post to the address or emailed to the address; and
- (e) are taken to be received by the addressee:
 - (1) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;

(2) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail; and

(3) (in the case of delivery by hand or email) on delivery,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

12. Dispute resolution

12.1 Disputes generally

The parties must endeavour to resolve any disputes arising between them in good faith and as soon as reasonably practicable after the dispute arises.

12.2 No litigation

Unless a party has complied with this clause 12, that party may not commence litigation or arbitration relating to any dispute arising from this consent except where that party seeks urgent interlocutory relief, in which case that party need not comply with this clause before seeking the relief.

12.3 Notice of dispute

If a dispute arises out of or in connection with this consent then a party may give a notice to the other party:

(a) stating that it is a notice under this clause; and

(b) including particulars of the matters the subject of the dispute,

(Notice of Dispute).

12.4 Executive negotiation

If the parties fail to resolve the dispute the subject of a Notice of Dispute within 10 Business Days after delivery of the notice, the dispute must be referred to the Chief Executive or equivalent senior officer of a party for resolution by negotiation. The parties' representatives must meet and, acting in good faith, attempt to resolve the dispute within 15 Business Days of the referral (or such later date as the parties may agree).

12.5 Expert determination

If the parties are unable to resolve a dispute in accordance with clause 12.4, then either party may by notice to the other party require that the dispute be referred to an expert for non-binding determination in accordance with the Institute of Arbitrators & Mediators Australia Expert Determination Rules or such other equivalent organisation or rules as agreed between the parties.

12.6 Exchange of information

The purpose of any exchange of information or consents or the making of any offer of settlement under this clause is to attempt to settle the dispute between the parties. No party may use any information or consents obtained through the dispute resolution process established by this clause for any purpose other than an attempt to settle the dispute between the parties.

12.7 Commencement of litigation

If a party has failed to comply on time with the procedures set out in this clause 13, any party which has complied with this clause may, by notice to the other party, terminate the process and commence litigation.

12.8 Continuance of performance

Notwithstanding the existence of a dispute, both parties must continue to perform their respective obligations under this consent.

13. Miscellaneous provisions

13.1 Governing Law

This document shall be governed by and construed in accordance with the laws of the State of New South Wales.

13.2 Jurisdiction

Any legal action or proceedings with respect to this consent against any party or any of its property and assets may be brought in the Courts of the state of New South Wales and, by execution and delivery of this consent that party accepts, for itself and in respect of its property and assets, generally and unconditionally the jurisdiction of the Courts of that state.

13.3 Variations

Any amendments, variation or modification to or of, or consent to departure by any party from the terms of this consent shall have no force or effect unless effected by a document executed by the parties.

13.4 Third Parties

This document shall confer rights and benefits only upon a person expressed to be a party and not upon any other person.

13.5 Assignment

A party shall not transfer or assign its rights or obligations under this consent without the prior consent in writing of the other party, which must not be unreasonably withheld where the incoming party agrees to be bound by the obligations of this consent.

13.6 Waivers

The failure to exercise or delay in exercising by any party of any right conferred by this consent shall not operate as a waiver and the single or partial exercise of any right by that party shall not preclude any other or further exercise of that or any other right by that party.

13.7 Remedies

The rights of a party conferred by this consent are cumulative and are not exclusive of any rights provided by law.

13.8 Pre-Contractual Negotiation

- (a) This document expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement, and supersedes and excludes any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement.

- (b) Neither party shall, after execution of this consent, be entitled, as against the other party or other officers of any party, to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this consent.

13.9 Further Assurance

Each party shall execute all documents and perform all acts necessary to give full effect to this consent.

13.10 Severability

Any provision of this consent which is prohibited or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this consent or affecting the validity or enforceability of that provision in any other jurisdiction.

13.11 Counterparts

This consent may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same document.

Reference Schedule

Item 1	City
	<p>Name: The Council of the City of Sydney</p> <p>ABN: 22 636 550 790</p> <p>Address: Town Hall House Level 6, 456 Kent Street Sydney NSW 2000</p> <p>City's Representative: Tracey Hargans, Community Portfolio Manager</p> <p>Email: thargans@cityofsydney.nsw.gov.au</p>
Item 2	Operator
	<p>Mirvac Capital Pty Ltd as trustee for the Mirvac Pitt Street Trust ABN 19 326 659 400; and Mirvac Commercial Sub SPV Pty Ltd as Trustee for Mirvac Pitt Street Trust No.2 ABN 14 958 651 710</p> <p>Address: Level 28, 200 George Street Sydney</p> <p><u>Operator's Representative: Tom Waters, Project Director</u></p> <p><u>Email:[insert]</u></p>
Item 3	Road
	<p>The Road comprising approximately [approx. 3m x 24m = 72] square metres (subject to survey) known as Queens Court, as depicted in DP 267949 and the attached Plan.</p>
Item 4	Permitted Use
	<p>Construction of a through site link and blast wall (if required) including installation of public artwork in accordance with the Voluntary Planning Agreement.</p>
Item 5	Works
	<p>The works to construct a through site link and erect a blast wall (if required) on the Road in accordance with the Voluntary Planning Agreement</p>
Item 6	Consent Period
	<p>(a) Consent Period: From the Commencing Date to the Terminating Date</p>
	<p>(b) Commencing Date: The date of this Consent</p>
	<p>(c) Terminating Date: The date that an Occupation Certificate is issued in respect of the Works performed under the Voluntary Planning Agreement over Queen's Court.</p>
Item 7	Option Period

	N/A
Item 8	Consent Fee
	To be determined in accordance with the City's Fees and Charges available from https://www.cityofsydney.nsw.gov.au/
Item 9	Public Liability Insurance
	\$20,000,000 in respect of any one claim and unlimited as to the number of claims.

Signing page:

Acceptance of conditions of consent

Executed by Mirvac Capital Pty Ltd ABN 19 326 659 400 as trustee for the Mirvac Pitt Street Trust in accordance with section 127 of the Corporations Act 2001 (NSW):

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

Executed by Mirvac Commercial Sub SPV Pty Ltd ABN 14 958 651 710 as Trustee for Mirvac Pitt Street Trust No.2 in accordance with section 127 of the Corporations Act 2001 (NSW):

Signature of Director

Signature of Director/Secretary

Name of Director

Name of Director/Secretary

Executed by the Council of the City of Sydney by its duly authorised officer in the presence of:

Signature of Witness

Signature of Authorised Officer

Name of Witness

Name of Authorised Officer

Annexure A - Plan

ANNEXURE I – RESTRICTION ON THE USE OF LAND - TELSTRA LAND

ANNEXURE "A" REFERRED TO IN RESTRICTION ON LOT 1 IN DEPOSITED PLAN 787946 BETWEEN TELSTRA CORPORATION LTD AND THE COUNCIL OF THE CITY OF SYDNEY

CONDITIONS OF RESTRICTIVE COVENANT

1. Except with the prior written agreement of Council:
 - (a) no Building may be erected, added to or altered on the Land which would result in the Gross Floor Area of all Buildings on the Land exceeding 100 sqm. This amount excludes any lanes development floor space permitted under the code; or
 - (b) in the event that the Building on the Land is destroyed or substantially damaged, no building may be erected, added to or altered on the Land which would result in the Gross Floor Area of all Buildings on the Land exceeding the lesser of 100 sqm and the Gross Floor Area permitted under the Code.
2. Council's discretion with respect to whether it will provide any agreement is:
 - (a) absolute, and may be refused or given subject to conditions, and without the need to give any reasons for its decision; and
 - (b) exercisable in its capacity as the prescribed authority under section 88E of the *Conveyancing Act 1919*, which is independent of Council's discretion under the *Environmental Planning and Assessment Act 1979* or any other legislation.
3. This positive covenant is for the benefit of Council and may only be released or varied with the prior written consent of Council.

Witness (signature):

Full Name (printed):
456 Kent Street, Sydney

Kirsten Tara Morrin – Director, Legal &
Governance
The Council of the City of Sydney

4. In this covenant:

Building includes any part of a building and a structure or any part of a structure.

Code means:

- (a) Sydney Local Environmental Plan 2012; and
- (b) any environmental planning instrument, development control plan, code, policy or other similar document adopted by Council or otherwise applying in the City of Sydney, which regulates the amount of floor space or area within a building.

Council means The Council of the City of Sydney or its successors.

Gross Floor Area has the same meaning as in the Sydney Local Environmental Plan 2012.

Land means the land comprised in folio identifier 1/787946 known as 6 Dalley Street, Sydney.

Lanes development floor space has the same meaning as in the Sydney Local Environmental Plan 2012.

Witness (signature):

Full Name (printed):
456 Kent Street, Sydney

Kirsten Tara Morrin – Director Legal &
Governance

The Council of the City of Sydney

[Telstra execution clause to be inserted]

ANNEXURE J – RESTRICTION ON THE USE OF LAND – AUSGRID LAND

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

(Sheet 1 of 8 sheets)

Plan: Plan of restrictive covenant over Lot A and Lot B in DP 104160.

Full name and address of the owners of the land:

Alpha Distribution Ministerial Holding Corporation
52 Martin Place, Sydney NSW 2000

The Council of the City of Sydney
Town Hall House, Level 2, 456 Kent Street, 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):	Benefitted lot(s), road(s), bodies or Prescribed Authorities:
1	Restrictive covenant	Lot A DP 104160 Lot B DP 104160	The Council of the City of Sydney

Plan: Plan of restrictive covenant over Lot A and Lot B in DP 104160

Part 2 (Terms)

1 INTERPRETATION

1.1 Definitions

These meanings apply unless the contrary intention appears:

Building includes any part of a building and a structure or any part of a structure.

Council means The Council of the City Sydney, its successors and any other body serving the same or similar function.

Existing Use means the use of the Substation Site solely as an electricity substation.

Grantor means the owner, or if there is more than one jointly the owners, of an estate in fee simple of a Lot Burdened.

Future Additional Gross Floor Area means if after the final occupation certificate under the *Environmental Planning and Assessment Act 1979* has been issued for the Mirvac Site in respect of a commercial office tower of at least 155 metres (or 31 December 2027 if earlier), *Sydney Local Environmental Plan 2012* or any other environmental planning instrument is amended (or further amended) so that the Lot Burdened would be entitled to any additional Gross Floor Area (over and above that which is approved on the grant of the final occupation certificate under the *Environmental Planning and Assessment Act 1979* for the Mirvac Site in respect of a commercial office tower of at least 155 metres (or 31 December 2027 if earlier)), that additional Gross Floor Area.

Gross Floor Area has the meaning in *Sydney Local Environmental Plan 2012*.

Lane Works means works installed to create the Through Site Link and activate the laneway in Lot B in DP104160 including without limitation hard and soft landscaping and also including (to the extent agreed between the registered proprietor of the Mirvac Site and Council) public art installations.

Lot Burdened means a lot referred to in Part 1 of this Instrument as being land burdened by this restrictive covenant.

Mirvac Site means Lot 501 DP 714847, Lots 2 and 3 DP 1092, Lots 1 and 2 DP 1112308, Lot 6 DP 75338, Lot 4 DP 524306, Lot 7 DP 110046 and Lot 1 DP 513109.

Network Headlease means the registered lease with dealing number AK971351.

Network Lease Land means Lot A in DP104160 and Lot B in DP104160.

Network Lease Land Freehold Owner means each person who is, from time to time, the registered owner of the freehold interest in the Network Lease Land.

Network Lease Land Occupier means:

- (a) during such time as the Network Headlease and Network Sublease remain on foot and registered against the Network Lease Land, the registered subtenant of the Network Lease Land under the Network Sublease; or
- (b) during such time (if any) as the Network Headlease remains on foot and registered against the Network Lease Land (but the Network Sublease has ceased to be on foot and registered

Plan:

Plan of restrictive covenant over Lot A and Lot B in DP
104160

against the Network Lease Land), the registered tenant of the Network Lease Land under the Network Headlease.

Network Leases means the Network Headlease and Network Sublease.

Network Leases End Date means 29 November 2115 or (if applicable) such earlier date on which the Network Headlease is terminated or is surrendered in respect of the relevant Network Lease Land.

Network Sublease means the registered sublease with dealing number AK971352.

Substation Site means Lot A in DP104160.

Substation means the electricity substation operated on the Substation Site.

Through Site Link means the proposed future pedestrian link connecting Dalley Street and Underwood Street through Lot B in DP104160.

1.2 Interpretation

In this Instrument:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (c) a reference to anything (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them;
- (d) specifying anything in this agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (e) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (f) the expression "Grantor" includes the Grantor, 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.

1.3 Headings

Headings do not affect the interpretation of this Instrument.

1.4 Severability

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

Plan:

Plan of restrictive covenant over Lot A and Lot B in DP
104160

2 TERMS OF RESTRICTIVE COVENANT NUMBERED ONE IN THE PLAN

2.1 Terms of Restrictive Covenant

- (a) Except with the prior written agreement of Council and subject to clause 2.1(b), during the term of this restrictive covenant no Building may be erected, added to or altered on the Lot Burdened which would result in the Gross Floor Area of all Buildings on the Lot Burdened exceeding 120m².
- (b) Nothing in clause 2.1(a) limits or prevents:
 - (i) using (or permitting) the use of the Lot Burdened or a Building and/or effecting (or permitting) the erection of a Building or alterations or additions to a Building on the Lot Burdened for the purpose of the Lane Works;
 - (ii) the use of the Lot Burdened or any Building for the Existing Use or undertaking any development works (including the erection of a Building or making alterations or additions to a Building) on the Lot Burdened for the purposes of the Existing Use; or
 - (iii) the use of the Lot Burdened or any Building and/or erection of a Building or making alterations or additions to a Building on the Lot Burdened where there is, and to the extent of, Future Additional Gross Floor Area.

2.2 Council

Council's discretion with respect to whether it will provide any agreement under clause 2.1(a) is:

- (a) absolute, and may be refused or given subject to conditions, and without the need to give any reasons for its decision; and
- (b) exercisable in its capacity as the prescribed authority under section 88E of the *Conveyancing Act 1919*, which is independent of Council's discretion under the *Environmental Planning and Assessment Act 1979* or any other legislation.

2.3 Release and Variation

- (a) From the date of this covenant until 29 November 2115 this covenant may only be released or varied with the prior written consent of Council.
- (b) On and from 29 November 2115, this covenant may be released or varied by the Grantor without the consent of Council.

2.4 Expiry of Restrictive Covenant

- (a) The Grantor and Council agree that this restrictive covenant extinguishes on the Grantor delivering a notice to Council requesting extinguishment, provided that the Grantor may only deliver such a notice on or after 29 November 2115.
- (b) The Grantor and Council agree to sign all documents and do all things necessary to give effect to the extinguishment of this restrictive covenant, including but not limited to preparing a dealing to record the extinguishment of this restrictive covenant, if the Grantor gives a notice under clause 2.4(a).

Plan:

Plan of restrictive covenant over Lot A and Lot B in DP
104160

2.5 Several liability of Grantor entities

Notwithstanding anything to the contrary in this document, the parties agree and acknowledge that:

- (a) where the Lot Burdened includes more than one parcel of land (each, for the purposes of this clause 2.5, a **Land Parcel**) and the Grantor consists of more than one person (each such person being, for the purposes of this clause 2.5, an **Individual Parcel Owner**):
 - (i) the obligations of each Individual Parcel Owner under this clause 2 are limited to the extent they relate to the Land Parcel owned by that Individual Parcel Owner (and each Individual Parcel Owner is severally liable to that extent); and
 - (ii) each Individual Parcel Owner is entitled to exercise its rights under this clause 2 independently of the other Individual Parcel Owner.
-

3 OPERATION DURING TERM OF NETWORK LEASES

3.1 Occupier to perform obligations and hold rights

Notwithstanding anything to the contrary in clauses 1 and 2 of this document (**Operative Provisions**), during the period prior to the Network Leases End Date that any Network Lease remains on foot (**Network Lease Land Occupier Period**):

- (a) any obligations under the Operative Provisions which would otherwise be imposed on the Network Lease Land Freehold Owner are (instead) imposed on the Network Lease Land Occupier (in each case as if the Network Lease Land Occupier was named in place of the Network Lease Land Freehold Owner); and
- (b) without limiting clause 3.1(a), the Network Lease Land Freehold Owner must not exercise or purport to exercise any right under the Operative Provisions (including any right to release, vary or modify any term of this document) without obtaining the written consent of the Network Lease Land Occupier.

3.2 Network Lease Land Freehold Owner assistance

- (a) Subject to clause 3.2(b), the Network Lease Land Freehold Owner agrees to, promptly on request by the Network Lease Land Occupier, provide (at the cost of the Network Lease Land Occupier) such assistance as is reasonably required by the Network Lease Land Occupier (including providing consents or entering into documentation as applicable) to enable the Network Lease Land Occupier to exercise its rights or perform its obligations under the Operative Provisions.
- (b) The obligations of the Network Lease Land Freehold Owner under clause 3.2(a):
 - (i) apply only to the extent that the relevant assistance requested is not able to be satisfied by the Network Lease Land Occupier as lessee of the Network Lease Land; and
 - (ii) apply from the date of this document until the end of the Network Lease Land Occupier Period.

3.3 End of term

All parties agree that:

- (a) clauses 3.1 and 3.2 cease to apply at the end of the Network Lease Land Occupier Period;

Plan:

Plan of restrictive covenant over Lot A and Lot B in DP
104160

- (b) subject to clause 3.3(c), the Network Lease Land Occupier is released from, and has no right, obligation or liability under, the Operative Provisions in respect of the period after the Network Lease Land Occupier Period; and
- (c) nothing in clause 3.3(b) releases the Network Lease Land Occupier from liability for a breach of an Operative Provision by the Network Lease Land Occupier prior to the end of the Network Lease Land Occupier Period.

Plan:

Plan of restrictive covenant over Lot A and Lot B in DP 104160

EXECUTION PAGE

Executed by Alpha Distribution Ministerial Holding Corporation as owner of Lot A and B in DP 104160

SIGNED, SEALED and DELIVERED for and on)
behalf of **Alpha Distribution Ministerial**)
Holding Corporation 67 505 387 385 in the)
presence of:)

.....
Signature of Witness

.....
Signature of Agent for Michael Pratt, NSW
Treasury Secretary (NSW Treasurer's delegate
under delegation dated 24 November 2015), on
behalf of Alpha Distribution Ministerial Holding
Corporation

.....
Print name of Witness

.....
Name of Agent in full

52 Martin Place, Sydney NSW 2000

Executed by Council of the City of Sydney

EXECUTED by the **Council of the City of**)
Sydney ABN 22 636 550 790 by its attorney)
under power of attorney registered book)
in the presence of:)

.....
Signature of witness

.....
Signature of Attorney

.....
Name of witness (block letters)

.....
Name of Attorney

Plan:

Plan of restrictive covenant over Lot A and Lot B in DP 104160

Executed by BLUE ASSET PARTNER PTY LTD, ERIC ALPHA ASSET CORPORATION 1 PTY LTD, ERIC ALPHA ASSET CORPORATION 2 PTY LTD, ERIC ALPHA ASSET CORPORATION 3 PTY LTD & ERIC ALPHA ASSET CORPORATION 4 PTY LTD as tenant of Lot A in DP 104160 under registered lease number AK971351.

[insert execution block]

Executed by BLUE OP PARTNER PTY LTD, ERIC ALPHA OPERATOR CORPORATION 1 PTY LTD, ERIC ALPHA OPERATOR CORPORATION 2 PTY LTD, ERIC ALPHA OPERATOR CORPORATION 3 PTY LTD & ERIC ALPHA OPERATOR CORPORATION 4 PTY LTD as tenant of Lot A in DP 104160 under registered sublease number AK971352.

[insert execution block]

Attachment E

**Gateway Determination
55 Pitt Street, Sydney**

Gateway Determination

Planning proposal (Department Ref: PP_2020_SYDNE_003_00): to amend Clause 6.25 of the Sydney Local Environmental Plan 2012 for 55 Pitt Street, Sydney.

I, the Director, Eastern District (City of Sydney) at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Sydney Local Environmental Plan (LEP) 2012 should proceed subject to the following conditions:

1. Prior to community consultation the planning proposal is to be revised to provide justification on the consistency with section 9.1 Directions 6.3 Site-Specific Provisions and 3.5 Development Near Licensed Aerodromes.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**;
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018); and
 - (c) All landowners in the APDG block, Ausgrid and Telstra are to be given notice of the planning proposal and public exhibition.
3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
 - Heritage Council of NSW;
 - Sydney Water;
 - Sydney Airport Corporation;
 - Airservices Australia;
 - Commonwealth Department of Infrastructure, Cities and Regional Development;
 - Civil Aviation Safety Authority; and
 - Transport for NSW.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).

5. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.
6. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
 - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.

Dated 22 day of June 2020.



David McNamara
Director, Eastern District (City of Sydney)
Greater Sydney, Place and Infrastructure
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning and
Public Spaces



Ms Monica Barone
Chief Executive Officer
City of Sydney Council
GPO Box 1591
SYDNEY NSW 2001

Dear Ms Barone

Planning proposal PP_2020_SYDNE_003_00 to amend Sydney Local Environmental Plan 2012 for 55 Pitt Street, Sydney

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend Clause 6.25 'APDG Block' of Sydney Local Environmental Plan 2012 for the site known as 55 Pitt Street, Sydney.

As delegate of the Minister for Planning and Public Spaces, I have now determined that the planning proposal should proceed subject to the conditions, enclosed is the Gateway determination.

It is noted that Council has requested to be authorised as the local plan-making authority. I have considered the nature of Council's planning proposal and have conditioned the Gateway for Council to be authorised as the local plan-making authority.

Amending the local environmental plan (LEP) is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office six weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning, Industry and Environment.

The State government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Mr Luke Thorburn, Planning Officer, to assist you Mr Thorburn can be contacted on (02) 8275 1283.

Yours sincerely

22 June 2020

David McNamara
Director, Eastern District (City of Sydney)
Greater Sydney, Place and Infrastructure
Department of Planning, Industry and Environment

Attachment F

**Council and CSPC Resolutions
55 Pitt Street, Sydney**

Resolution of Council

18 May 2020

Item 8.2

Public Exhibition – Planning Proposal – 55 Pitt Street, Sydney - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

It is resolved that:

- (A) Council approve Planning Proposal - 55 Pitt Street, Sydney, shown at Attachment A to the subject report, to be submitted to the Minister for Planning and Public Spaces with a request for gateway determination;
- (B) Council approve Planning Proposal - 55 Pitt Street, Sydney shown at Attachment A to the subject report for public authority consultation and public exhibition in accordance with any conditions imposed under the gateway determination;
- (C) Council seek authority from the Minister for Planning and Public Spaces to exercise the delegation of all of the functions under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan and to put into effect Planning Proposal - 55 Pitt Street, Sydney;
- (D) Council approve the draft Sydney Development Control Plan 2012 - 55 Pitt Street, Sydney, shown at Attachment B to the subject report for public authority consultation and public exhibition concurrent with the Planning Proposal;
- (E) authority be delegated to the Chief Executive Officer to make any minor variations to Planning Proposal - 55 Pitt Street, Sydney, following receipt of the gateway determination;
- (F) authority be delegated to the Chief Executive Officer to make any minor variations to Draft Sydney Development Control Plan 2012 - 55 Pitt Street, Sydney to correct any drafting errors or ensure it is consistent with the Planning Proposal following the gateway determination; and

- (G) authority be delegated to the Chief Executive Officer to prepare a draft planning agreement in accordance with the letter of offer dated 2 April 2020 at Attachment C to the subject report, and the requirements of the Environmental Planning and Assessment Act 1979, to be exhibited concurrently with the Planning Proposal and draft Development Control Plan for the site.

Carried unanimously.

X027614

Resolution of Central Sydney Planning Committee

14 May 2020

Item 7

Public Exhibition – Planning Proposal – 55 Pitt Street, Sydney - Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012 Amendment

Moved by the Chair (the Lord Mayor), seconded by Councillor Thalys -

It is resolved that:

- (A) the Central Sydney Planning Committee approve Planning Proposal - 55 Pitt Street, Sydney, shown at Attachment A to the subject report, to be submitted to the Minister for Planning and Public Spaces with a request for gateway determination;
- (B) the Central Sydney Planning Committee approve Planning Proposal - 55 Pitt Street, Sydney shown at Attachment A to the subject report for public authority consultation and public exhibition in accordance with any conditions imposed under the gateway determination;
- (C) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 11 May 2020 that Council seek authority from the Minister for Planning and Public Spaces to exercise the delegation of all of the functions under section 3.36 of the Environmental Planning and Assessment Act 1979 to make the local environmental plan and to put into effect Planning Proposal - 55 Pitt Street, Sydney;
- (D) the Central Sydney Planning Committee note the recommendation to Council's Transport, Heritage and Planning Committee on 11 May 2020 that Council approve the draft Sydney Development Control Plan 2012 - 55 Pitt Street, Sydney, shown at Attachment B to the subject report for public authority consultation and public exhibition concurrent with the Planning Proposal;
- (E) authority be delegated to the Chief Executive Officer to make any minor variations to Planning Proposal - 55 Pitt Street, Sydney, following receipt of the gateway determination;

- (F) authority be delegated to the Chief Executive Officer to make any minor variations to Draft Sydney Development Control Plan 2012 - 55 Pitt Street, Sydney to correct any drafting errors or ensure it is consistent with the Planning Proposal following the gateway determination; and
- (G) authority be delegated to the Chief Executive Officer to prepare a draft planning agreement in accordance with the letter of offer dated 2 April 2020 at Attachment C to the subject report, and the requirements of the Environmental Planning and Assessment Act 1979, to be exhibited concurrently with the Planning Proposal and draft Development Control Plan for the site.

Carried unanimously.

X027614

Item 3.

Traffic Treatment - Proposed Permanent Road Closure - Morehead Street at James Street, Redfern

File No: 2020/093562

Summary

This report recommends Council approve a permanent road closure to vehicular traffic in Morehead Street at James Street, Redfern to improve pedestrian access, safety and increase open space.

In August 2019, residents of Morehead Street submitted a petition to the City to consider greening and traffic calming measures in Morehead Street, between Cooper and James Street. The petition was tabled at Council's meeting on 19 August 2019.

Council resolved that the Chief Executive Officer investigate suggested traffic measures and where possible, trial a Liveable Slow Street proposal through a range of temporary design measures and signs to prevent through traffic from Morehead Street onto James Street.

In November 2019, the City sought support from Transport for New South Wales (TfNSW) to trial a 'Liveable Slow Street' on Morehead Street. Transport for New South Wales did not support a trial, however supported a permanent road closure in Morehead Street at James Street.

On 28 February 2020, Transport for New South Wales approved a Traffic Management Plan (TMP) to permanently close Morehead Street, Redfern at James Street.

The City consulted with the local community to gather feedback on the proposed permanent road closure from April 2020 to May 2020. At the end of the consultation period the City received 28 submissions with 75 per cent of the submissions received supporting the City's proposal.

A road closure in Morehead Street will improve safety by reducing vehicular traffic and traffic speeds. The proposal will provide additional landscaping, and extra space for pedestrian activity. The closure will also include the provision of kerbside traffic islands to provide an area to facilitate vehicles turning at the new closure.

The proposal will result in the loss of approximately four car parking spaces in Morehead Street (see Attachment A).

The proposal was referred to the Local Pedestrian Cycling and Traffic Calming Committee on 17 September 2020 where the closure was endorsed (see Attachment B).

Recommendation

It is resolved that Council approve the permanent road closure of Morehead Street at James Street, Redfern to vehicular traffic so it reduces traffic flow using the street, reduces traffic speeds, improves safety and allows for additional landscaping.

Attachments

Attachment A. Concept Plan

Attachment B. Local Pedestrian, Cycling and Traffic Calming Committee (LPCTCC)
Advice - 17 September 2020

Background

1. In August 2019, residents of Morehead Street submitted a petition to the City to consider greening and traffic calming measures in Morehead Street, between Cooper and James Street. The petition was tabled at Council's meeting on 19 August 2019.
2. Council resolved that the Chief Executive Officer investigate suggested traffic measures and where possible, trial a Liveable Slow Street proposal through a range of temporary design measures and signs to prevent through traffic from Morehead Street onto James Street.
3. In September 2019, the City commissioned traffic counts in Morehead Street, between Arthur and James Streets over a seven-day period. The traffic counts recorded a maximum of 181 vehicles per day and most drivers were driving below 30km/h. The traffic counts indicate the number of vehicles using Morehead Street is low, it is used mostly by local residents and a road closure in Morehead Street would have minimal impact. Local access to and from Morehead Street will remain available from Walker and Arthur Streets or Little Young and Cooper Streets (see Attachment A).
4. In November 2019, the City sought support from Transport for New South Wales (TfNSW) for a Liveable Slow Streets trial. Transport for New South Wales did not support a trial but supported a permanent road closure in Morehead Street.
5. In accordance to Section 116 of the Roads Act 1993, a public notice for the permanent road closure of Morehead Street at James Street was published in the Sydney Morning Herald on 8 April 2020 for a minimum of 28 days. 236 letters were also sent out to local residents and businesses in the area.
6. At the end of the consultation period the City received 28 submissions with 75 per cent of the submissions supporting the City's proposal.
7. Following a review of all the submissions, City staff referred the proposal to the Local Pedestrian Cycling and Traffic Calming Committee (LPCTCC) for its consideration at its July meeting.
8. On 16 July 2020, the Morehead Street Closure proposal was deferred at the July Local Pedestrian Cycling and Traffic Calming Committee meeting at the request of South Sydney Police, as they had concerns the road closure would attract drinking, loitering and other anti-social activity into the street.
9. On 4 September 2020, a site meeting was held between the South Sydney Police, City staff and representatives of the residents of Morehead Street. The Police discussed their concerns with the residents and made them aware of the potential issues that might be caused by this proposed road closure. The residents acknowledged the concerns of the South Sydney Police however, they still wanted the City to proceed with the road closure, as this will provide much needed space for the community.
10. On 17 September 2020, the permanent road closure to vehicular traffic in Morehead Street at James Street, Redfern was endorsed by the Local Pedestrian, Cycling and Traffic Calming Committee (see Attachment B).
11. Once approved, the closure will be implemented initially in temporary materials such as bollards or concrete barricades with some road line marking. This will remain until the permanent road closure is built.

Key Implications

Strategic Alignment - Sustainable Sydney 2030

12. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This plan is aligned with the following strategic directions and objectives:
 - (a) Direction 2 provides a road map for the City to become A Leading Environmental Performer for Greening Sydney with more landscaping and open space.
 - (b) Direction 4 - A City for Walking and Cycling - The proposals help develop a network of safe, linked pedestrian paths which gives greater priority to pedestrians.

Financial Implications

13. Once approved, the closure will be implemented initially in temporary materials such as bollards or concrete barricades with some road line marking. This will remain until the permanent road closure is built.
14. Funding for construction of the permanent works will be sought as part of the next iteration of the City's capital works program
15. Ongoing maintenance costs for the permanent road closure are not expected to exceed existing costs to maintain the current trafficable road.

Relevant Legislation

16. Transport for NSW is responsible for the control of traffic on all NSW roads and has delegated to Council certain functions to regulate traffic on local roads.
17. The Transport for NSW delegation gives Council authority to approve road closures under Part 8, Division 2 of the Roads Act 1993.
18. This delegation can only be exercised by the elected Council and is subject to a number of conditions and limitations, including the advice of Council's Local Pedestrian, Cycling and Traffic Calming Committee.

Critical Dates / Time Frames

19. Projects are prioritised on safety treatments (such as new pedestrian crossings) throughout the Local Government Area and the 2020/2021 is fully allocated. Construction of the permanent closure in Morehead Street will commence at completion of all currently listed safety projects. Estimated construction year is 2023/24 through the LPCTC funding program.
20. Subject to Council endorsement of the permanent road closure, temporary materials will be installed as soon as practicable (early 2021). This will remain until the permanent road closure is built.

Public Consultation

21. In accordance with Section 116 of the Roads Act 1993, a public notice for the permanent road closures of Morehead Street at James Street was published in the Sydney Morning Herald on 8 April 2020 for a minimum of 28 days. 236 letters were also sent out to local residents and businesses in the area.
22. At the end of the consultation period the City received 28 submissions with 75 per cent of the submissions received supporting the City's proposal.
23. Comments received during the public consultation were reviewed to determine how the proposal can progress or modified to address community comments.
24. The Local Pedestrian, Cycling and Traffic Calming Committee meeting on 17 September 2020 considered and endorsed the proposed permanent road closure to vehicular traffic in Morehead Street at James Street, Redfern (see Attachment B).

DAVID RIORDAN

Director City Services

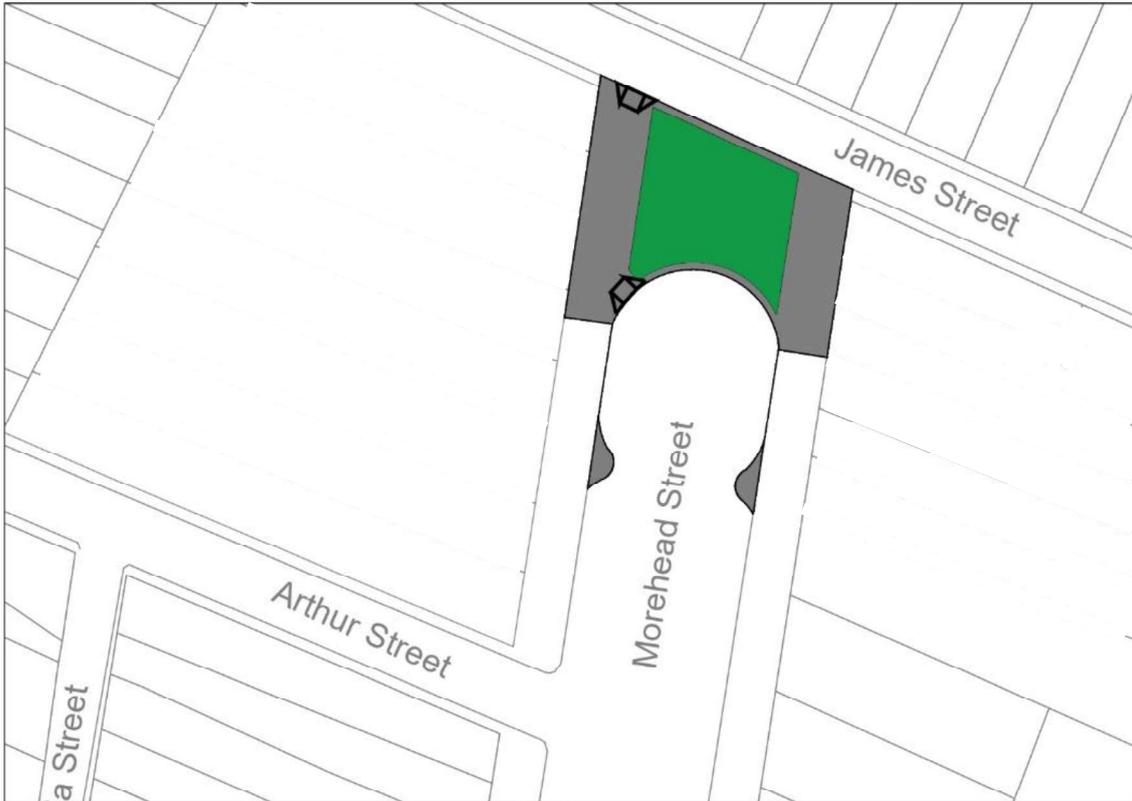
George Angelis, Chief Engineer

Hassan Choudhry, A/Senior Traffic Engineer

Attachment A

Concept Plan

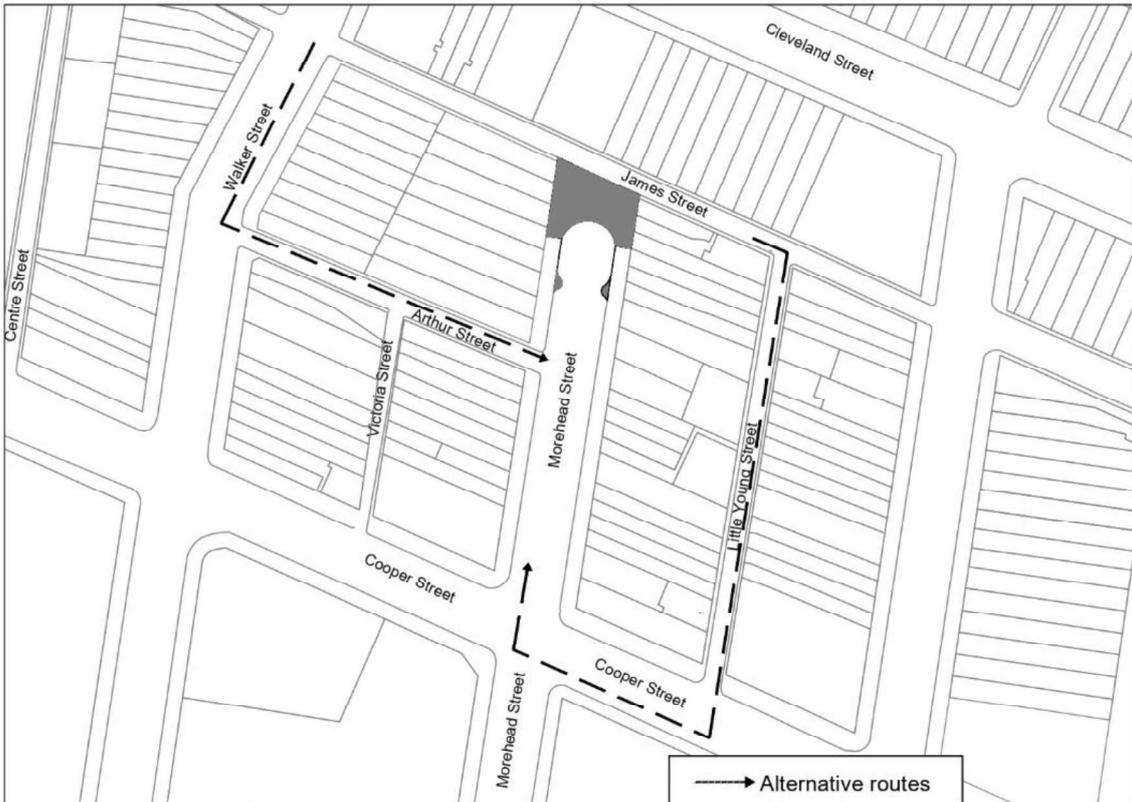
Concept Plan



CITY OF SYDNEY



Proposed Permanent Road Closure
Morehead Street closed at James Street, Redfern



CITY OF SYDNEY



Alternative access to Morehead St via Walker St and Arthur St or via Little Young St and Cooper St

Attachment B

**Local Pedestrian, Cycling and Traffic
Calming Committee (LPCTCC) Advice
17 September 2020**

17 September 2020

Item 32

Traffic Treatment - Permanent Road Closure - Morehead Street at James Street, Redfern

2020/093562

Recommendation

It is recommended that the Committee endorse the permanent road closure of Morehead Street, Redfern at James Street.

Voting Members for this Item

Voting Members	Support	Object
City of Sydney	✓	
Transport for NSW	✓	
NSW Police – South Sydney PAC	✓	
Representative for the Member for Newtown	✓	

Advice

The Committee unanimously supported the recommendation.

Background

In August 2019, residents of Morehead Street, Redfern submitted a petition asking the City to consider greening and traffic calming in Morehead Street between Cooper and James Street.

Item 4.

Fire Safety Report

File No: S105001.002

Summary

The City of Sydney regularly receives building reports from Fire and Rescue NSW in relation to inspections carried out by Fire and Rescue NSW Authorised Officers. Fire and Rescue NSW has powers under the Environmental Planning and Assessment Act 1979 (the Act) to carry out inspections of buildings.

These inspection reports are to be reported to Council and Council is required to determine whether to exercise its power to issue fire safety orders under Division 9.3 and Schedule 5 of the Environmental Planning and Assessment Act 1979 (the Act).

In response to Fire and Rescue NSW reports, City staff undertake inspections to ensure fire safety measures are in full operation and that building exits are clear and unimpeded. Fire and Rescue NSW inspections revealed fire safety concerns that require Council, as the appropriate regulatory authority, to use its discretion and address the concerns observed at the time of the inspection.

Attached are details of the report received by the City from Fire and Rescue NSW. The attachment deals with a specific property and includes the Fire and Rescue NSW report and the findings (preliminary or final) by the City's Officer, along with other documentation relevant to that property.

One property is the subject of this report and the recommendation is for Council to not exercise its power to issue a Fire Safety Order under the Environmental Planning and Assessment Act 1979 at this time but note that alternative compliance action is recommended to address the identified fire safety deficiencies at 169-171 Phillip Street, Sydney.

Recommendation

It is resolved that Council:

- (A) note the contents of the Fire Safety Report Summary Sheet, as shown at Attachment A to the subject report;
- (B) note the inspection report by Fire and Rescue NSW related to 169-171 Phillip Street, Sydney, as shown at Attachment B of the subject report; and
- (C) not exercise its power to issue a Fire Safety Order under the Environmental Planning and Assessment Act 1979 at this time but note the alternative compliance action as recommended by the City's Investigation Officer to address the identified fire safety deficiencies at 169-171 Phillip Street, Sydney as detailed in Attachment B to the subject report.

Attachments

Attachment A. Fire Safety Report Summary Sheet

Attachment B. Inspection Report - 169-171 Phillip Street, Sydney

Background

1. The City receives inspection reports and recommendations from Fire and Rescue NSW in relation to inspections carried out on buildings located within the City's local government area.
2. Under the Environmental Planning and Assessment Act 1979, (the Act), Fire and Rescue NSW has the power to carry out inspections of buildings to determine if the building has adequate provision for fire safety and/or is compliant with legislation.
3. On average, the City receives approximately 50 such reports each year. They can be prompted by reports from the Police or others who have a concern relating to fire safety in a building.
4. The inspection was undertaken to ensure fire safety measures were in full operation and that building exits were clear and unimpeded.
5. When Fire and Rescue NSW carries out such an inspection, a report and any recommendations must be provided to the City.
6. Under the Act, Council is then required to table the report and determine whether it will exercise its power to issue a Fire Safety Order 1 or 2 in Schedule 5, Part 2 of the Act. Fire Safety Order 1 requires a person to do or stop doing certain specified things to improve fire safety; Fire Safety Order 2 requires a person to cease conducting an activity on premises where that activity constitutes, or is likely to constitute, a life-threatening hazard or a threat to public health or public safety.
7. Attached are the details of the report received from Fire and Rescue NSW, including a recommendation for further action. The property has also been reviewed by a City Officer.
8. Personal information has been redacted from the reports in accordance with the Privacy and Personal Information Protection Act 1998.

Relevant Legislation

9. Environmental Planning and Assessment Act 1979.

GRAHAM JAHN AM

Director City Planning, Development and Transport

Andrew Thomas, Executive Manager Development

Attachment A

Fire Safety Report Summary Sheet

Fire Safety Report Summary Sheet
Cl.17, Schedule 5 of the Environmental Planning and Assessment Act 1979, reports to Council, S105001.002

Total number of properties tabled: 1

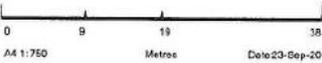
Report – 16 November 2020

Summary table

Att. (A-B)	Premises Specifics (<i>predominate building use</i>)	Actions/ Recommendation
A	Not applicable – Summary Sheet	Summary of clause 17, Schedule 5 matters tabled at Council meeting.
B	169-171 Phillip Street, Sydney – St James Hall	Premises inspected, owners have been issued with corrective action correspondence; follow up compliance site inspections are to be undertaken to ensure fire safety works are satisfactorily completed.

Attachment B

**Inspection Report -
169-171 Phillip Street, Sydney**



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Council officer Inspection and Recommendation Report
Clause 17(2) of Schedule 5, of the Environmental Planning and Assessment Act
1979 (the Act)

File: CSM 2384931 **Officer:** Hieu Van Luu **Date:** 24 September 2020

Premises: 169-171 Phillip Street, Sydney

Executive Summary

Council received correspondence dated 16 September 2020 from the Commissioner of Fire and Rescue NSW (FRNSW) in relation to the subject premises with respect to matters of fire safety.

The premises is located close to the corner of King Street and Phillip Street and is a mixed-use building with retail on ground floor level and commercial offices on the levels above.

An inspection was undertaken by Council's officer on 28 September 2020 in the presence of the Building Manager and revealed that the isolation issues associated with the Fire Indicator Panel and Emergency Warning and Intercommunication System identified by FRNSW had been rectified.

FRNSW also raised issues relating to Tactical Fire Plans (TFPs) which were not provided within the fire control room of the building. The matter of TFPs was discussed with the building manager at the time of the inspection and it was agreed that it can be addressed by routine preventative and corrective maintenance actions undertaken by the owner's fire service contractor(s), confirmed by written instruction from Council.

The premises is equipped with numerous fire safety systems (both active and passive) that would provide adequate provision for fire safety for occupants in the event of a fire. The annual fire safety certification is current and compliant and was on display within the building in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.

Observation of the external features of the building identified the existence of potential combustible composite cladding on the façade of the building. The external cladding appears to be limited in extent being fitted only to the street entrance awning of the building. The City's Cladding Compliance staff will commence an investigation into the external cladding installed on this building to make a formal determination as to its suitability. The building is not considered high risk and has been prioritised accordingly.

Chronology:

Date	Event
16/09/2020	FRNSW correspondence dated 16 September received regarding premises 169-171 Phillip Street, Sydney
28/9/2020	An inspection of the subject premises was undertaken by a Council officer on 28 September 2020 in the presence of the Building Manager revealed that the isolation issues associated with the Fire Indicator Panel and Emergency Warning and Intercommunication System identified by FRNSW had been rectified. The provision of Tactical Fire Plans were discussed with the building manager and it was agreed that this can be addressed through written instruction from Council.

FIRE AND RESCUE NSW REPORT:

References: [BFS19/4257 (10041), D20/75293; 2020/421552]

Fire and Rescue NSW conducted an inspection of the subject premises on 8 September 2020 in response to receipt of correspondence in relation to the adequacy of the provision for fire safety.

Issues

The report from FRNSW detailed the maintenance issues associated with the Fire Indicator Panel and Emergency Warning and Intercommunication System.

The report has also detailed the issue of Tactical Fire Plans which were not provided within the fire control room.

FRNSW Recommendations

FRNSW have made a number of recommendations and have requested that Council:

1. Inspect the subject premises, address any other deficiencies identified on the premises and take action to have the fire safety issues identified by FRNSW appropriately addressed;
2. Advise them in writing of its determination in relation to this matter in accordance with the provisions of clause 17(4) of Schedule 5 of the Environmental Planning and Assessment Act 1979.

COUNCIL INVESTIGATION OFFICER RECOMMENDATIONS

Issue Order(NOI)	Issue emergency Order	Issue a compliance letter of instruction	Cited Matters rectified	Continue to undertake compliance action in response to issued Council correspondence	Continue with compliance actions under the current Council Order	Other (to specify)

As a result of site inspection undertaken by Council officers on 28 September 2020 it was determined to issue the owners of the building a compliance letter of instruction to rectify the identified fire safety deficiencies noted by Council and FRNSW. The letter, issued 7 October 2020, direct the owners of the premises to carry out remedial actions to existing fire systems to comply with the required standards of performance.

It is recommended that Council not exercise its powers to give a fire safety order at this time, and that the Commissioner of FRNSW be advised of Council's actions and outcomes.

Referenced documents:

No#	Document type	Trim reference
A1.	Council Officer Report	2020/421552

Trim Reference: 2020/421552

CSM reference No#: 2384931

Unclassified



File Ref. No: BFS19/4257 (10041)
TRIM Ref. No: D20/75293
Contact: [REDACTED]

16 September 2020

General Manager
City of Sydney
GPO Box 1591
SYDNEY NSW 2001

Email: council@cityofsydney.nsw.gov.au

Attention: Manager Compliance/Fire Safety

Dear General Manager

**Re: INSPECTION REPORT
'ST JAMES HALL'
169 PHILLIP STREET SYDNEY ("the premises")**

Fire & Rescue NSW (FRNSW) received correspondence on 23 December 2019, in relation to the adequacy of the provision for fire safety in connection with 'the premises'.

The correspondence stated that:

- *EWIS does not appear to activate when FIP is in alarm*

Pursuant to the provisions of Section 9.32 (1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), an inspection of 'the premises' on 8 September 2020 was conducted by Authorised Fire Officers from the Fire Safety Compliance Unit of FRNSW.

The inspection was limited to the following:

- A visual inspection of the essential Fire Safety Measures as identified in this report only.
- A conceptual overview of the building, where an inspection had been conducted without copies of the development consent or copies of the approved floor plans.

Fire and Rescue NSW

ABN 12 593 473 110

www.fire.nsw.gov.au

Community Safety Directorate
Fire Safety Compliance Unit

1 Amarina Ave
Greenacre NSW 2190

T (02) 9742 7434
F (02) 9742 7483

www.fire.nsw.gov.au

Page 1 of 3

Unclassified

On behalf of the Commissioner of FRNSW, the following comments are provided for your information in accordance with Section 9.32 (4) and Schedule 5, Part 8, Section 17(1) of the EP&A Act. Please be advised that Schedule 5, Part 8, Section 17(2) requires any report or recommendation from the Commissioner of FRNSW to be tabled at a Council meeting.

COMMENTS

Please be advised that this report is not an exhaustive list of non-compliances however, the proceeding concerns also identifies deviations from the National Construction Code 2019, Volume 1 Building Code of Australia (NCC). Given the concerns are based on observations available at the time FRNSW acknowledges that the deviations may contradict development consent approval. In this regard, it would be at council's discretion as the appropriate regulatory authority to conduct its own investigation and consider the most appropriate action.

The following items were identified as concerns during the inspection:

1. Essential Fire Safety Measures
 - 1A. Fire Indicator Panel (FIP) and Emergency Warning and Intercommunication System (EWIS) – At the time of the inspection, the FIP and EWIS were clear of faults and isolations. A review of the logbooks at the time also revealed that both fire safety measures had recently been serviced. Furthermore, there were no faults mentioned in either logbook as detailed in the fire safety concern.
2. Generally
 - 2A. Fire Control Room (FCR) – It would be at council's discretion to determine whether the FCR requires upgrading to Clause E1.8 and Specification E1.8 of the NCC. Consideration may include the following items:
 - A. Tactical Fire Plans (TFP) – Clause 9 of Specification E1.8 of the NCC requires TFPs to be available within the FCR. The TFPs are to be durable and colour coded. It is unclear based on observations at the time, that the plans within the FCR meets this requirement.
 - B. Fire Safety Guideline – Having regard to FRNSW's guideline "Emergency Services Information Package and Tactical Fire Plans", the following items are provided
 - i. Emergency Services Information Package (ESIP) – ESIPs provide firefighters and other emergency services with specific information that can be used during operations. An ESIP could not be located.

Unclassified

- ii. TFP – TFPs are typically used by firefighters during firefighting operations. It is vital that all TFPs are accurate and kept current at all times.
- C. Emergency Plan – Typically TFPs are located in close proximity to the emergency plan. At the time of the inspection, the emergency plan could not be located.

FRNSW is therefore of the opinion that there are inadequate provisions for fire safety within the building.

RECOMMENDATIONS

FRNSW recommends that Council:

- a. Inspect and address any other deficiencies identified on 'the premises', and require item no. 1 through to item no. 2 of this report be addressed appropriately.

This matter is referred to Council as the appropriate regulatory authority. FRNSW therefore awaits Council's advice regarding its determination in accordance with Schedule 5, Part 8, Section 17 (4) of the EP&A Act.

Should you have any enquiries regarding any of the above matters, please do not hesitate to contact [REDACTED] of FRNSW's Fire Safety Compliance Unit on (02) 9742 7434. Please ensure that you refer to file reference BFS19/4257 (10041) for any future correspondence in relation to this matter.

Yours faithfully

[REDACTED]

Senior Building Surveyor
Fire Safety Compliance Unit