

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

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Rules for interpreting this document.....	8
2. APPLICATION OF THE ACT AND THE REGULATION	9
2.1 Application of this document	9
2.2 Public Benefits to be made by Developer	9
2.3 Application of sections 7.11, 7.12 and 7.24 of the Act	9
2.4 City rights.....	10
2.5 Explanatory note	10
3. OPERATION OF THIS PLANNING AGREEMENT	10
3.1 Commencement	10
4. WARRANTIES	10
4.1 Mutual warranties	10
4.2 Developer warranties	11
5. PUBLIC BENEFITS	11
5.1 Developer to provide Public Benefits	11
5.2 City assistance	11
6. COMPLETION.....	12
6.1 Date of Completion	12
6.2 Developer completion notice	12
6.3 Inspection by the City	12
6.4 Date of Achieving Environmental Performance Initiatives	13
6.5 Non-completion of Public Benefits	14
7. INDEMNITY	14
8. DEFECTS LIABILITY.....	15
8.1 Security for Defects Liability Period	15
8.2 Defect in the Public Benefits.....	15
9. REGISTRATION AND CAVEAT	15
9.1 Registration of this document.....	15
9.2 Caveat	16
9.3 Release of this document.....	17
10. ENFORCEMENT	17
10.1 Developer to provide Guarantee	17
10.2 Adjustment of Guarantee Amount	17
10.3 Right of City to claim on Guarantee.....	18
10.4 Expenditure by the City	18
10.5 Top-up and return of Guarantee	19
10.6 Compulsory acquisition.....	19
11. DISPUTE RESOLUTION	20
11.1 Application.....	20
11.2 Negotiation	20
11.3 Not use information	20
11.4 Condition precedent to litigation	21
11.5 Summary or urgent relief.....	21

12.	TAXES AND GST	21
12.1	Responsibility for Taxes	21
12.2	GST free supply	21
12.3	Supply subject to GST	21
13.	DEALINGS.....	22
13.1	Dealing by the City	22
13.2	Dealing by the Developer.....	22
13.3	Extinguishment or creation of interests on Transfer Land	23
14.	TERMINATION	23
15.	LIMITATION OF LIABILITY – MIRVAC CAPITAL PTY LIMITED	24
16.	LIMITATION OF LIABILITY – MIRVAC COMMERCIAL SUB SPV PTY LTD	26
17.	CONFIDENTIALITY AND DISCLOSURES	27
17.1	Use and disclosure of Confidential Information	27
17.2	Disclosures to personnel and advisers	27
17.3	Disclosures required by law.....	28
17.4	Receiving party's return or destruction of documents	28
17.5	Security and control.....	29
17.6	Media releases	29
18.	NOTICES	29
19.	GENERAL	29
19.1	Governing law	29
19.2	Access to information	30
19.3	Liability for expenses.....	30
19.4	Relationship of parties.....	30
19.5	Giving effect to this document.....	30
19.6	Time for doing acts	30
19.7	Severance.....	31
19.8	Preservation of existing rights	31
19.9	No merger	31
19.10	Waiver of rights.....	31
19.11	Operation of this document.....	31
19.12	Operation of indemnities.....	32
19.13	Inconsistency with other documents.....	32
19.14	No fetter.....	32
19.15	Counterparts.....	32
1.	PUBLIC BENEFITS - OVERVIEW.....	37
2.	PAYMENT OF MONETARY CONTRIBUTION.....	39
2.1	Payment.....	39
2.2	Indexation	40
2.3	No trust.....	40
2.4	Expenditure by the City	40
3.	INSTRUMENTS.....	40
4.	TRANSFER LAND.....	41
4.1	Dedication of land – decision	41
4.2	Obligations on dedication.....	41
4.3	Obligations on transfer	41
5.	FINAL DESIGN OF THE DEVELOPER'S WORKS	42
5.1	Scope of Developer's Works	42

5.2	Final design of Developer’s Works	43
5.3	Preparation of and changes to construction design drawings	44
6.	BLAST WALL.....	45
6.1	Blast Wall	45
7.	CONSTRUCTION OF DEVELOPER’S WORKS.....	45
7.1	Insurance	45
7.2	Approvals and consents	46
7.3	Construction work.....	46
7.4	Inspections by the City	46
8.	ENVIRONMENTAL PERFORMANCE INITIATIVES	47
8.1	Environmental Performance Commitment	47
8.2	Environmental Performance Initiatives Guidelines	47
9.	STANDARDS.....	48

Schedules

1	Agreement Details	33
2	Requirements under the Act and Regulation (clause 2)	35
3	Public Benefits (clause 5).....	37

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:

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

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

-

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

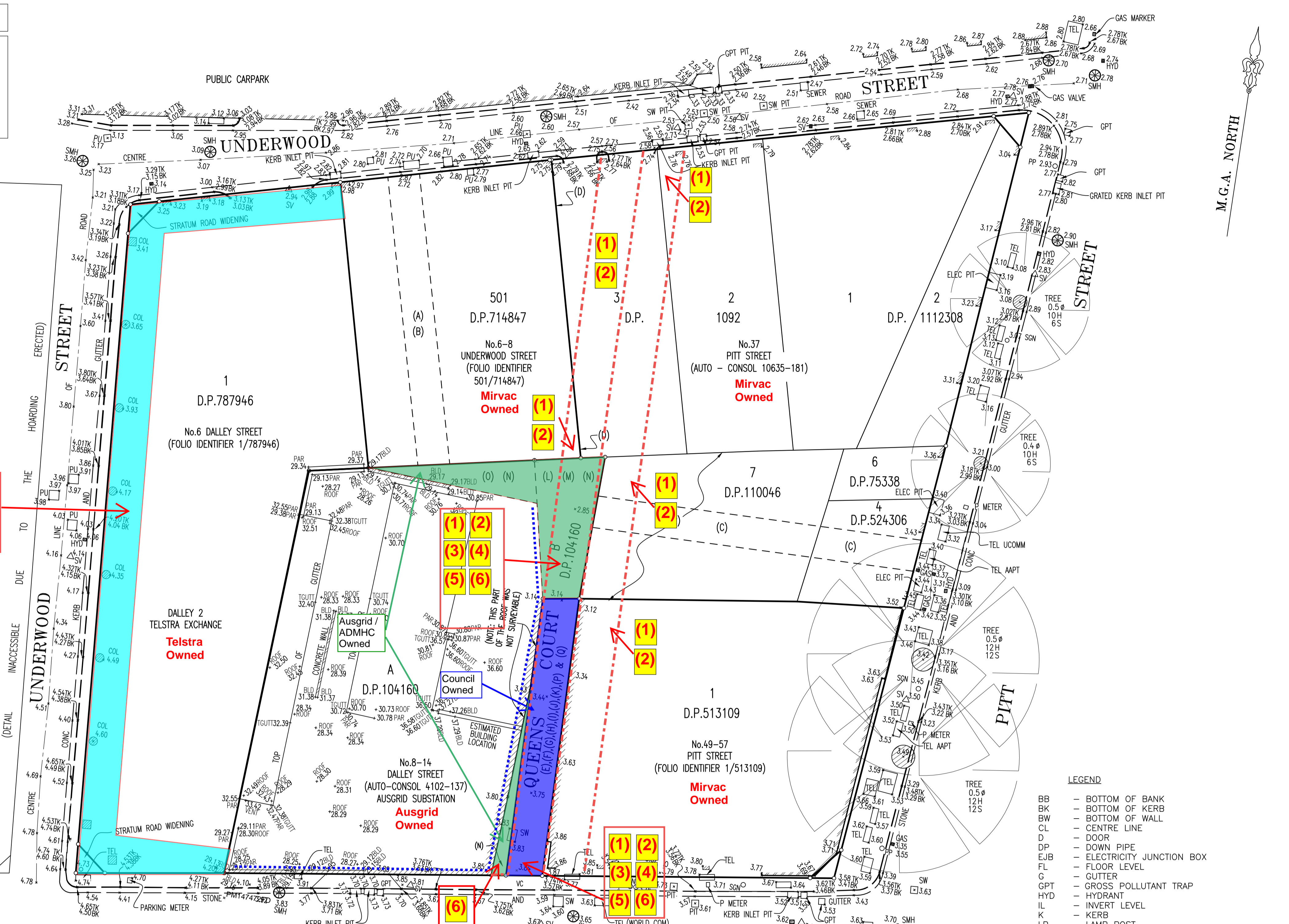
- Ausgrid / ADMHC Owned
- Council Owned
- Blast Wall location
- Telstra Owned (colonnade shown indicatively N.T.S.)

21
D.P.1063401

1
D.P.75111

1
D.P.70970

1
D.P.107759



- (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:
 1. ORIGIN OF LEVELS PM 150301, R.L.8.662 (A.H.D.).
 2. 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..."
 3. RELATIONSHIP OF IMPROVEMENTS AND DETAIL TO BOUNDARIES IS DIAGRAMMATIC ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY.
 4. NO SERVICES OR UNDERGROUND SERVICES SEARCH HAS BEEN UNDERTAKEN. SERVICES SHOWN ARE BASED ON VISIBLE SURFACE INDICATORS EVIDENT AT THE DATE OF SURVEY & ARE CHARTED AS A GUIDE TO THE POSITION & NATURE OF THE SERVICE. ALL SERVICE AUTHORITIES SHOULD BE CONTACTED PRIOR TO ANY DEVELOPMENT.
 5. ADJOINING BUILDINGS AND DWELLINGS HAVE BEEN PLOTTED FOR DIAGRAMMATIC PURPOSES ONLY AND SPECIFIC DETAILS, IF CRITICAL, WILL REQUIRE FURTHER SURVEY.
 6. 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

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.			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

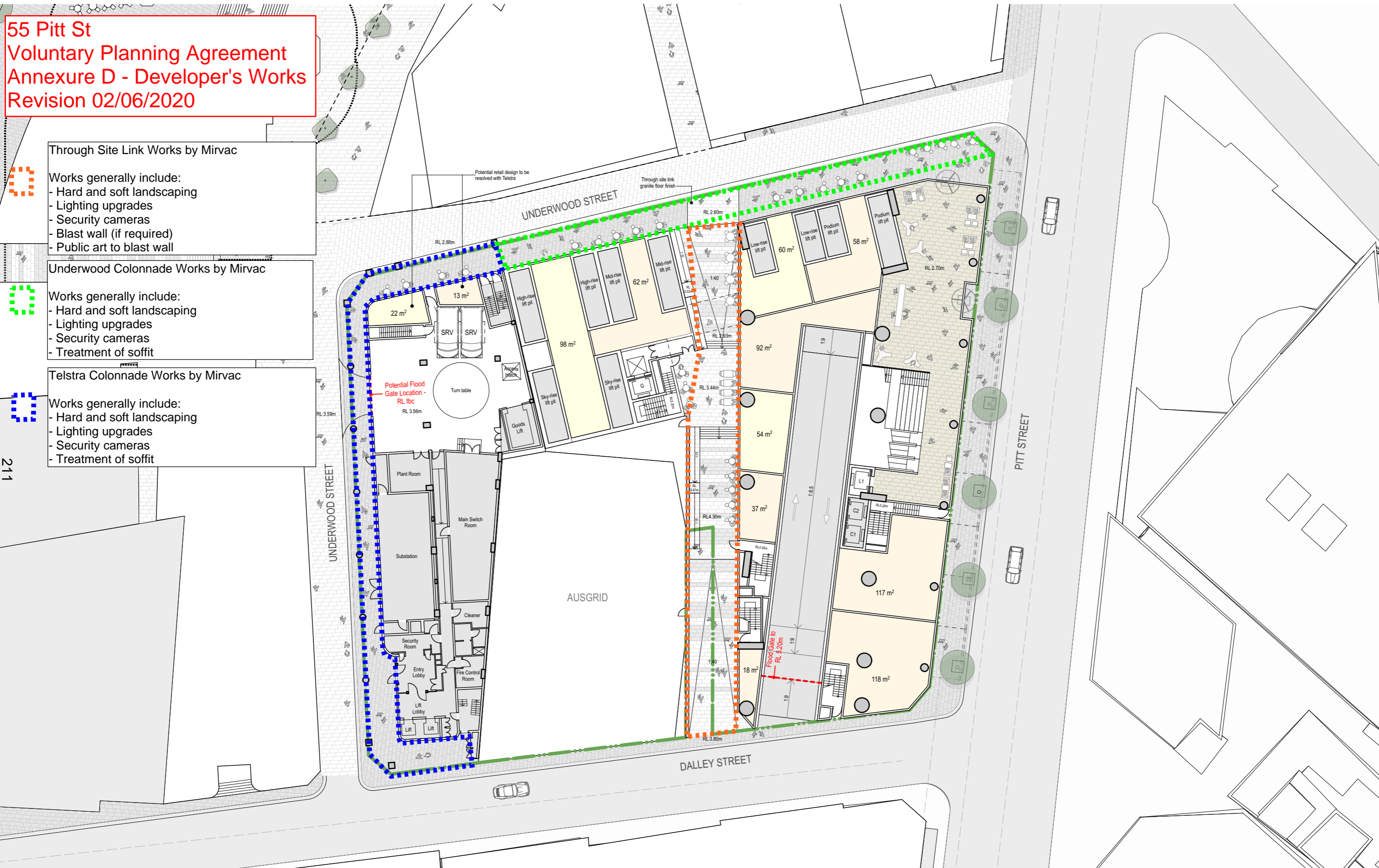
Underwood Colonnade Works by Mirvac

- 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

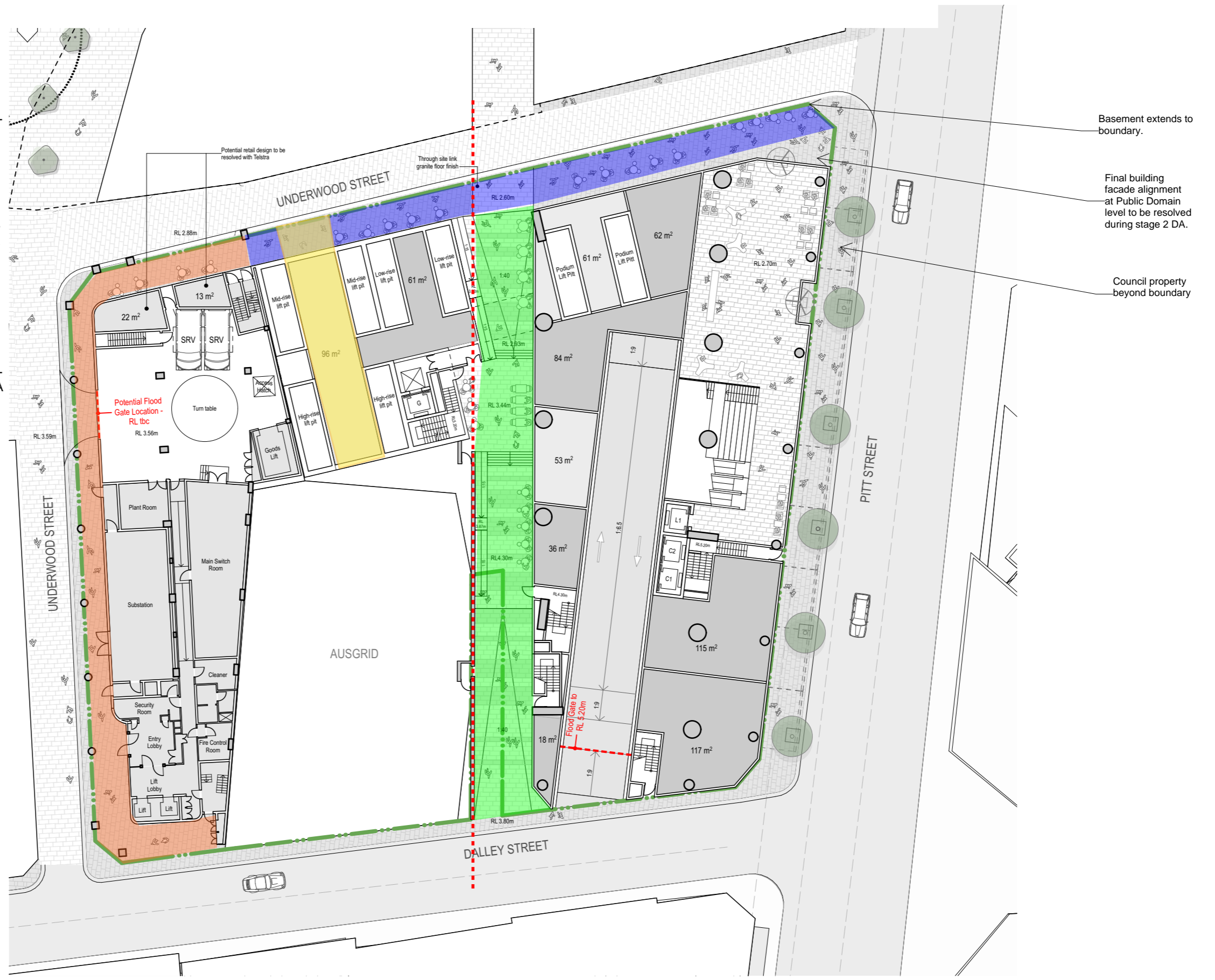
Telstra Land - External footpath areas to have public access easement registered on titles per 55 Pitt Street VPA drafting. Easement to extend to match the same height as existing colonnade soffit (height varies). Refer following pages for section that depicts easement heights.

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.

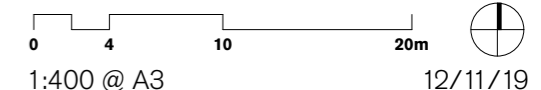
213
Blast wall alignment

Easement for electricity purposes



Public Domain - Indicative design

Mirvac - 55 Pitt Street



1:400 @ A3

12/11/19

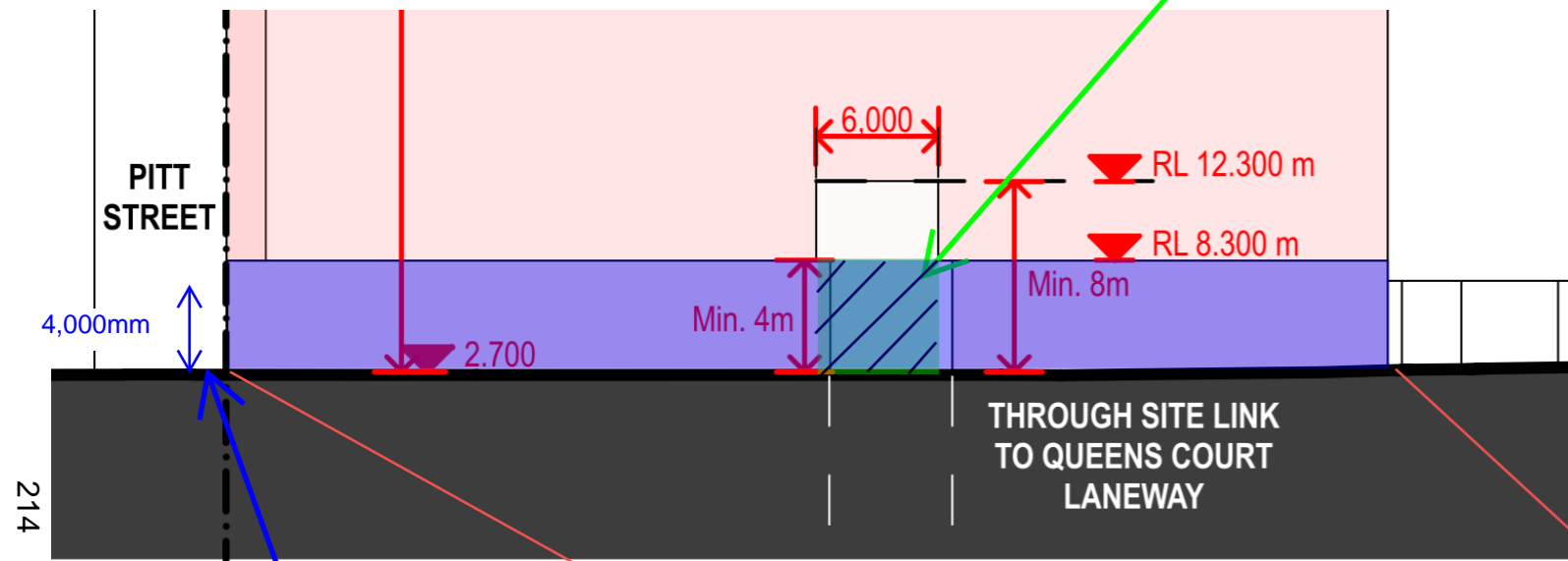
Proposed Public Easement & Stratum Elevation - Mirvac Colonnade

Envelope Elevation North

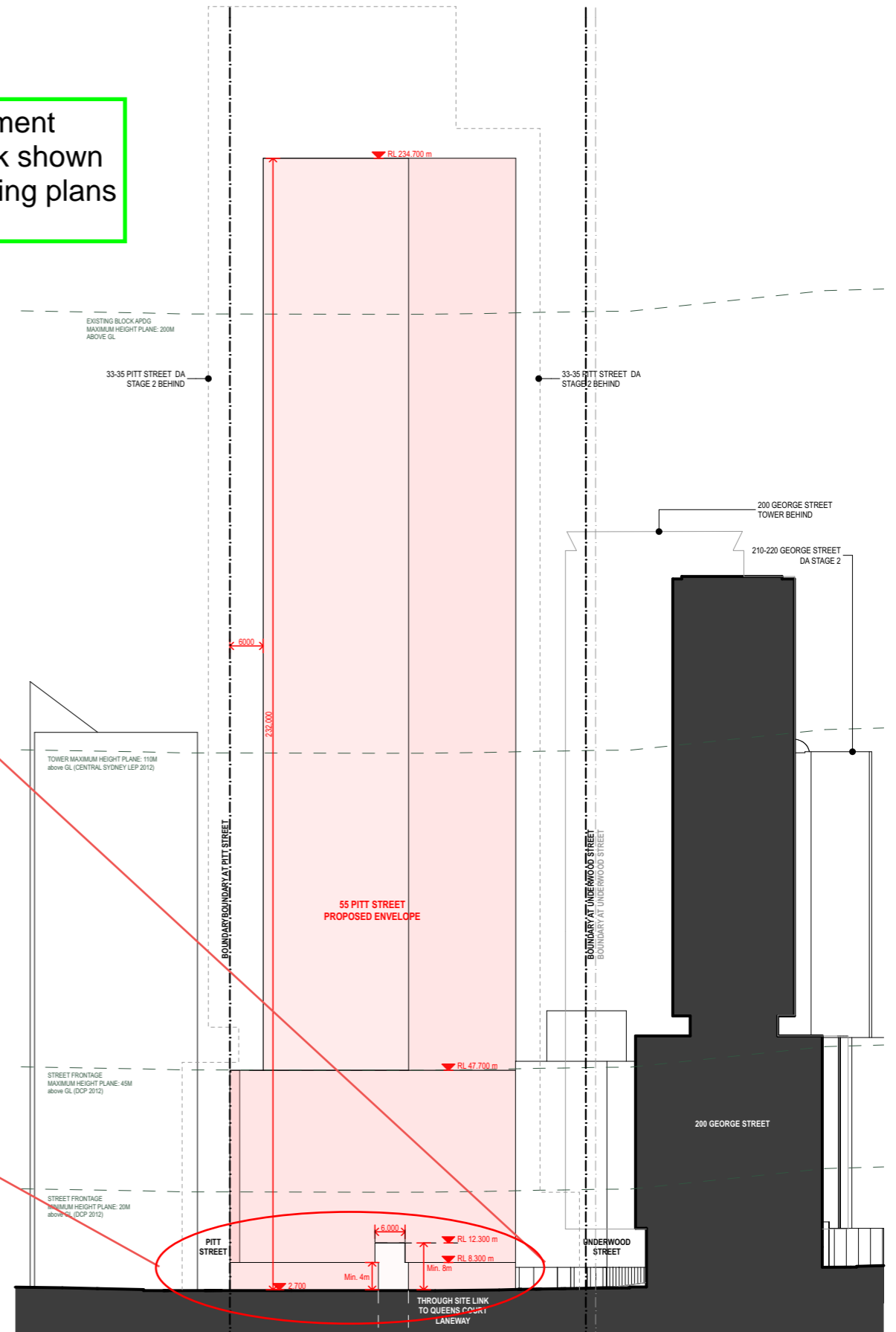
Legend:

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.



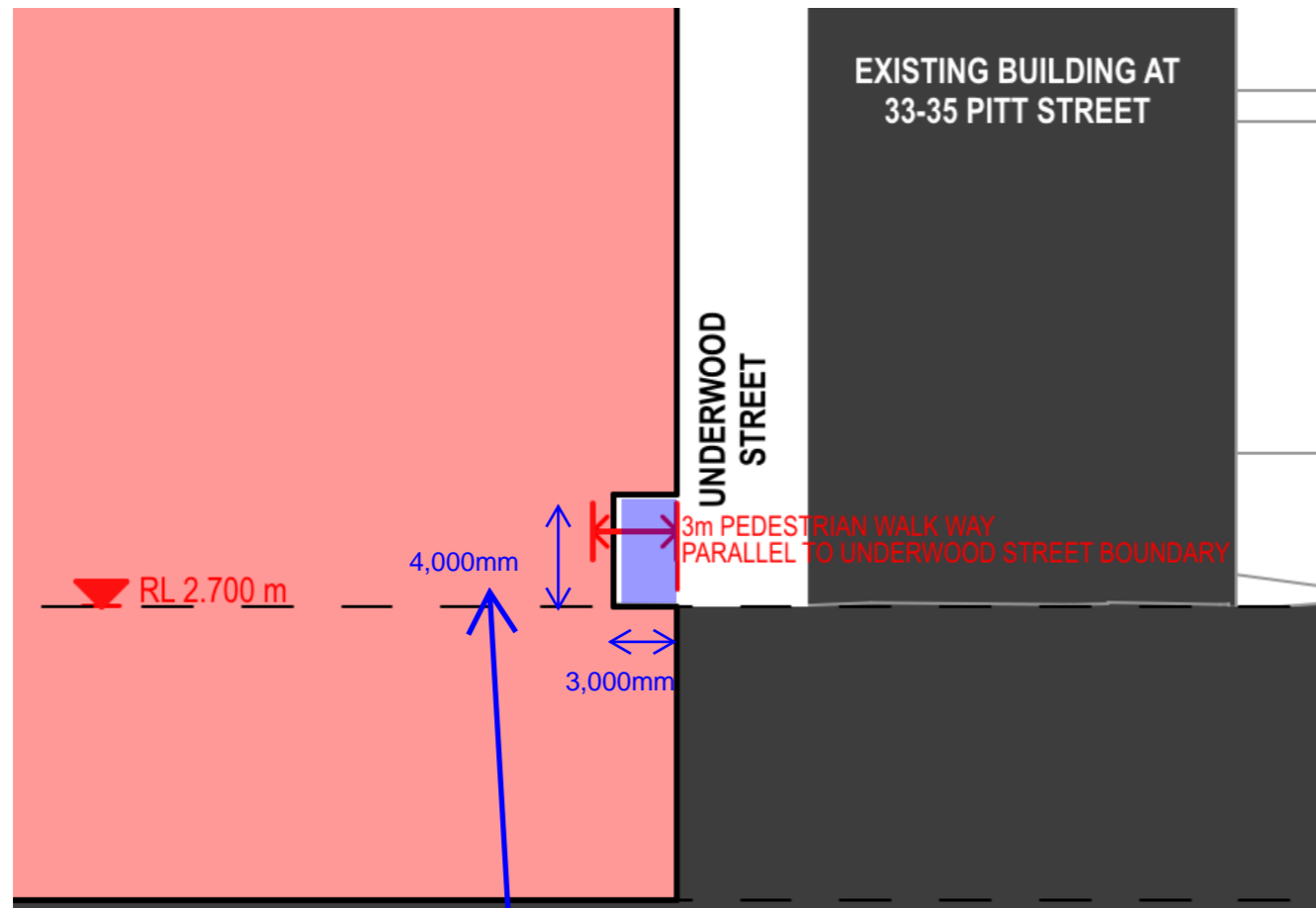
Proposed Public Easement & Stratum Section - Mirvac Colonnade

Envelope Section C South-North

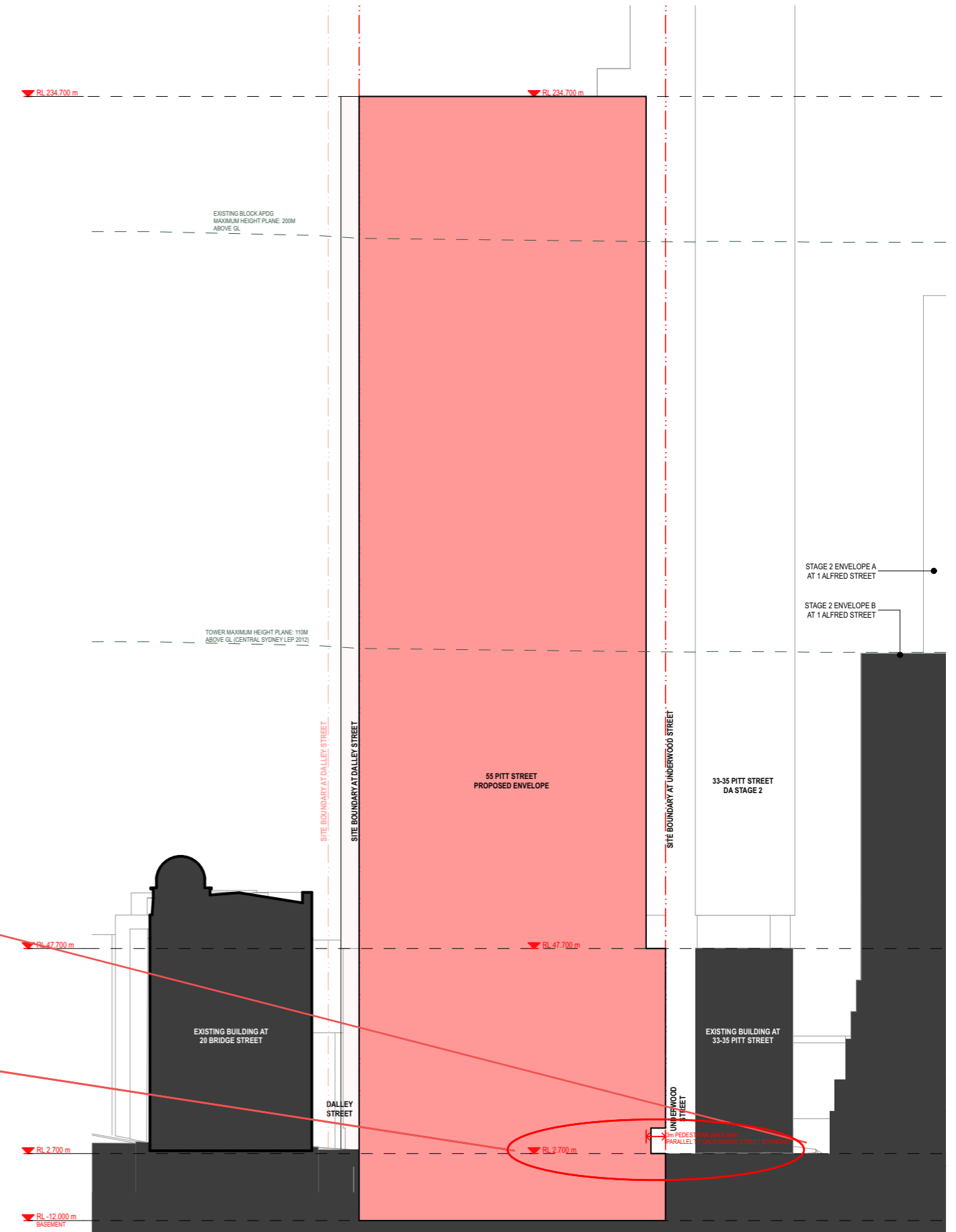
Legend:

External footpath areas to be dedicated to CoS by way of stratum subdivision per 55 Pitt Street VPA drafting.

215



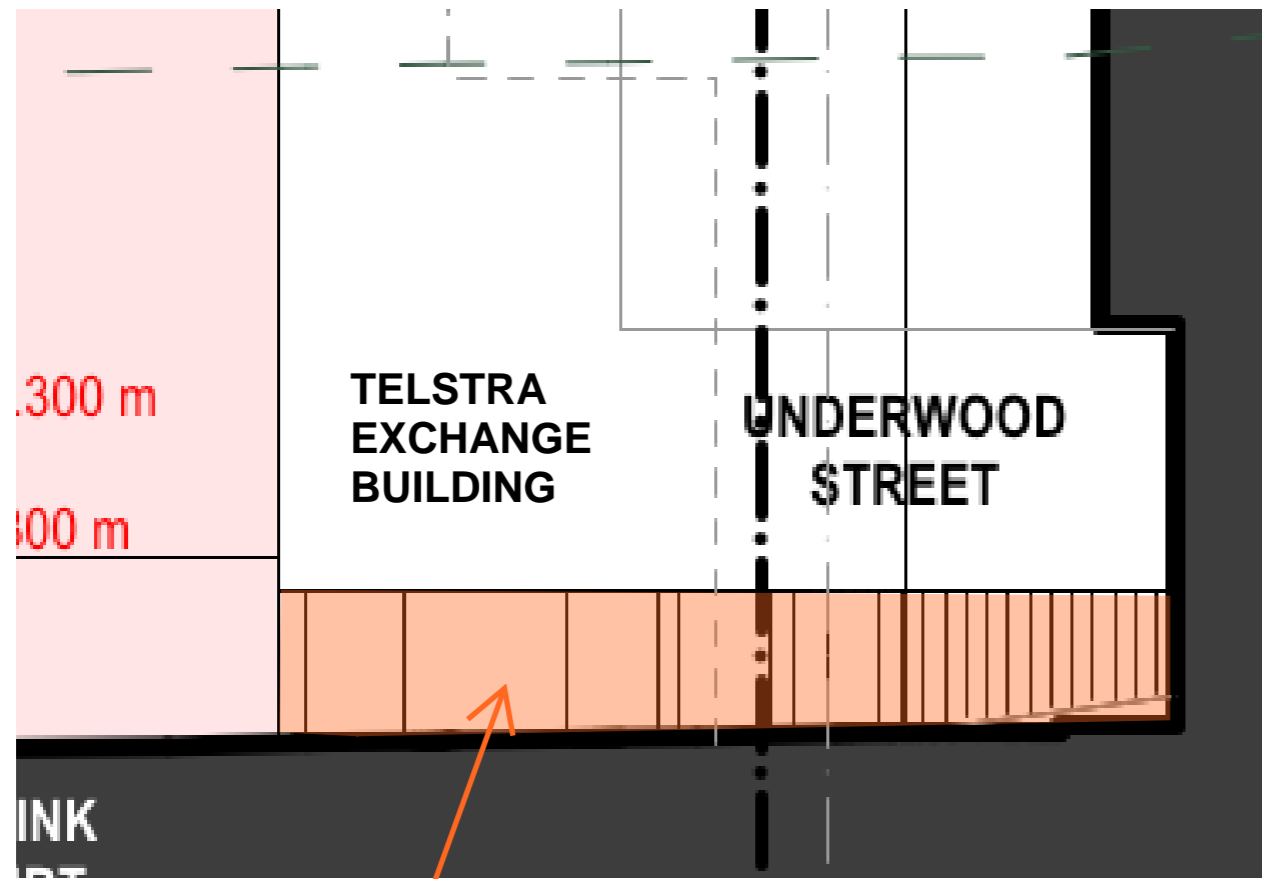
CoS Stratum subdivision to extend minimum 4,000mm above finished paving level.



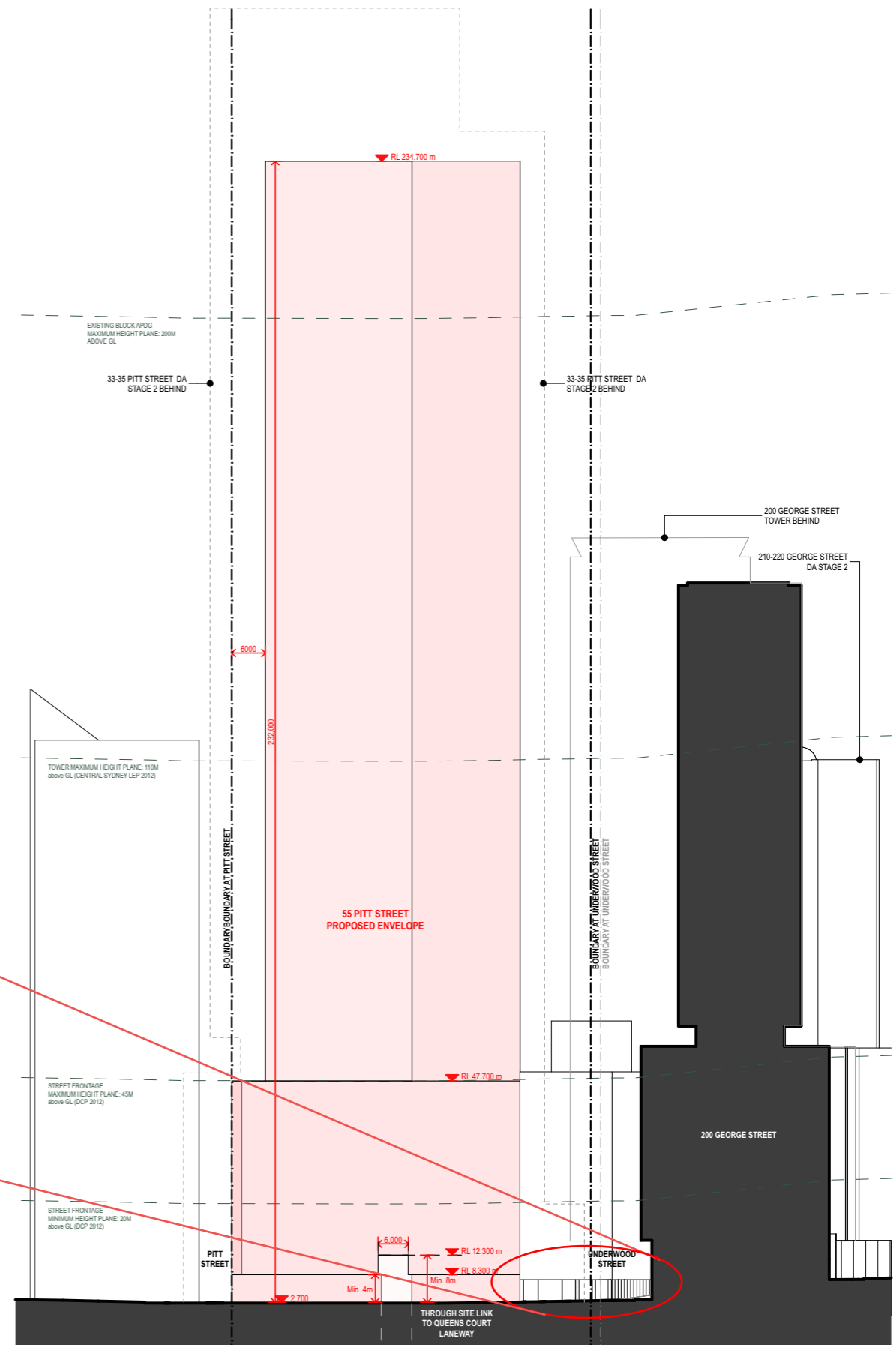
Proposed Public Easement & Stratum Section - Telstra Land

Envelope Elevation North

216



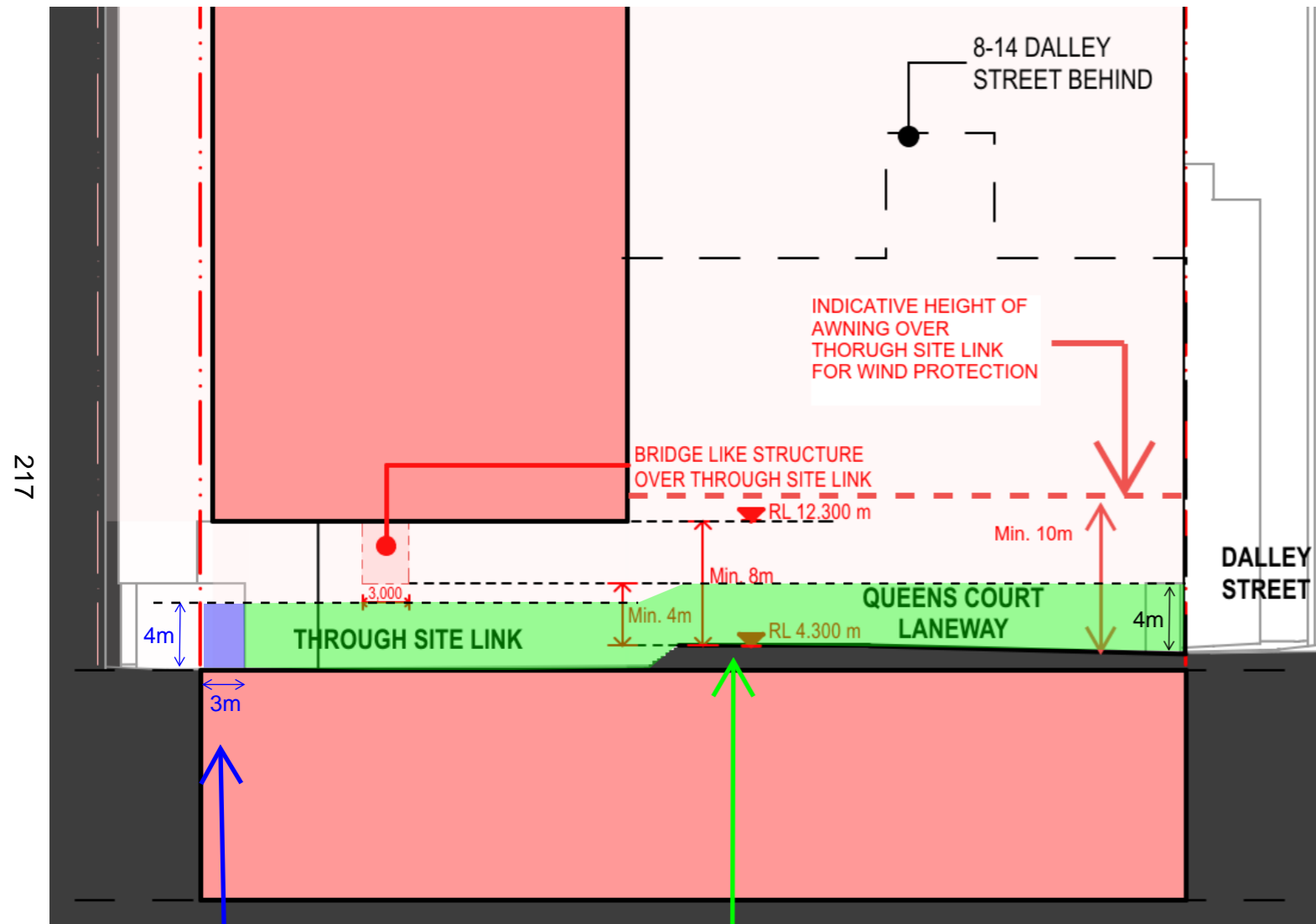
Public easement to extend to height of existing Telstra Colonnade soffit. Height varies.



Proposed Public Easement & Stratum Section - Through Site Link

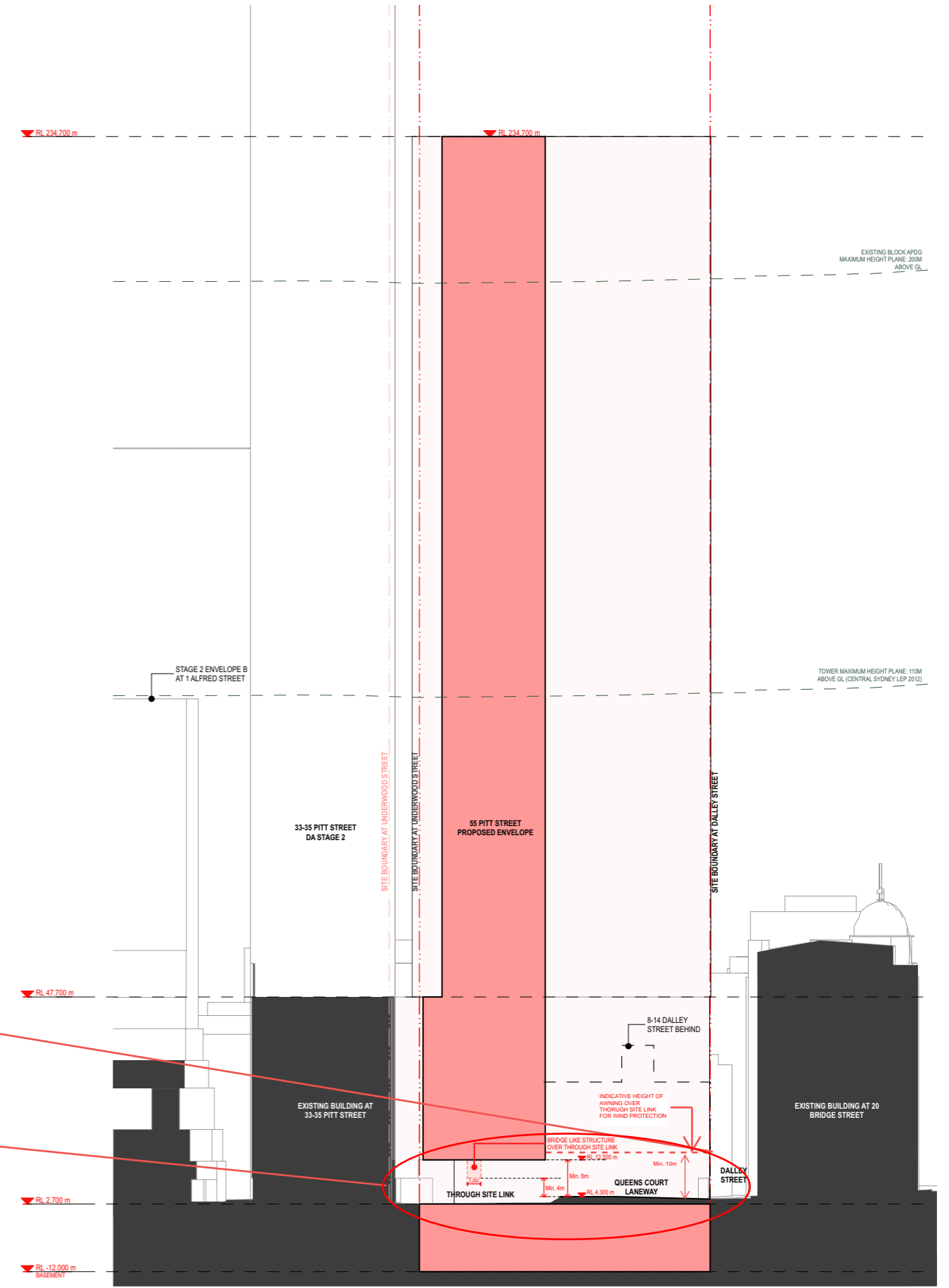
Envelope Section D North-South

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:

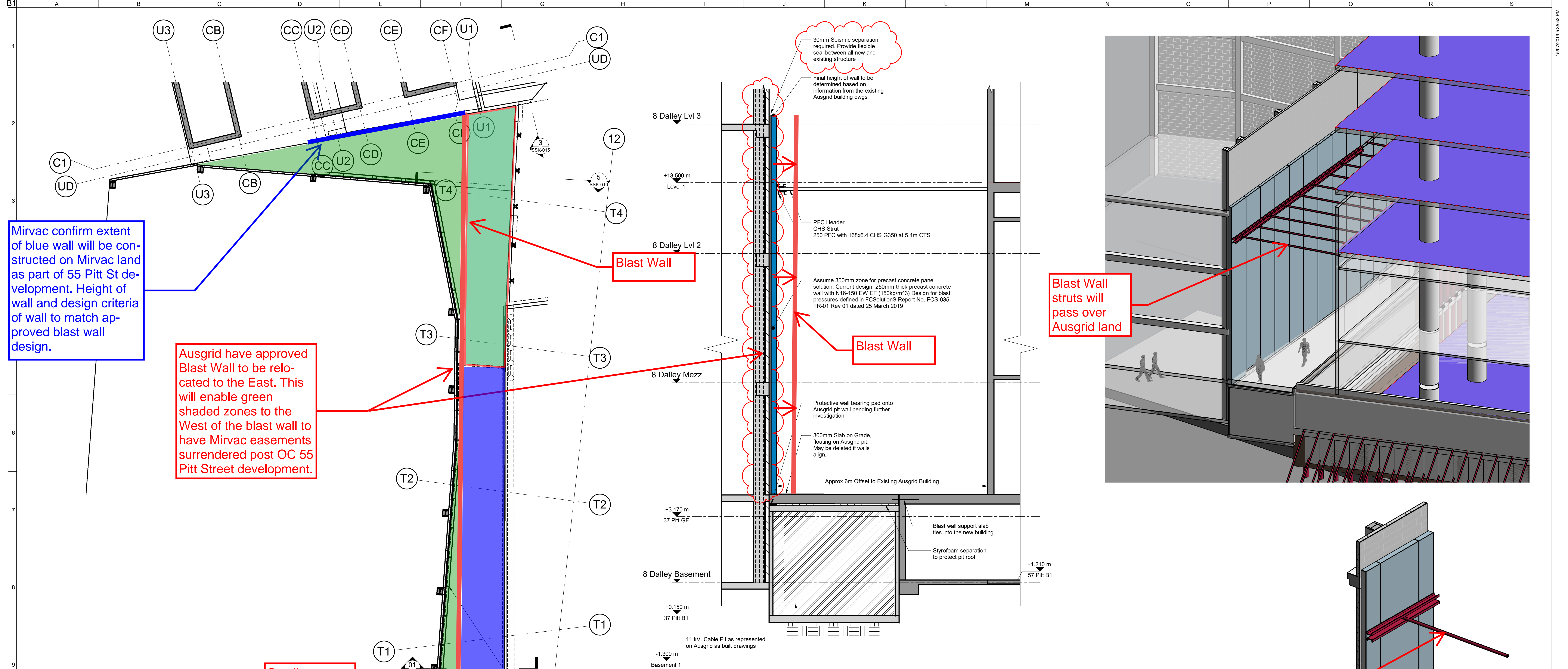
- (a) The Mirvac Contribution will equal the Council Compensation Contribution.
- (b) Mirvac will contribute this amount to the Blast Wall Contribution as set out above.
- (c) Should the public art be affixed to the Blast Wall the Mirvac Contribution will be for the public art component of the wall only 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.

Blast Wall

Blast Wall

Blast Wall struts will pass over Ausgrid land

Blast Wall struts will pass over Ausgrid land

Blast Wall

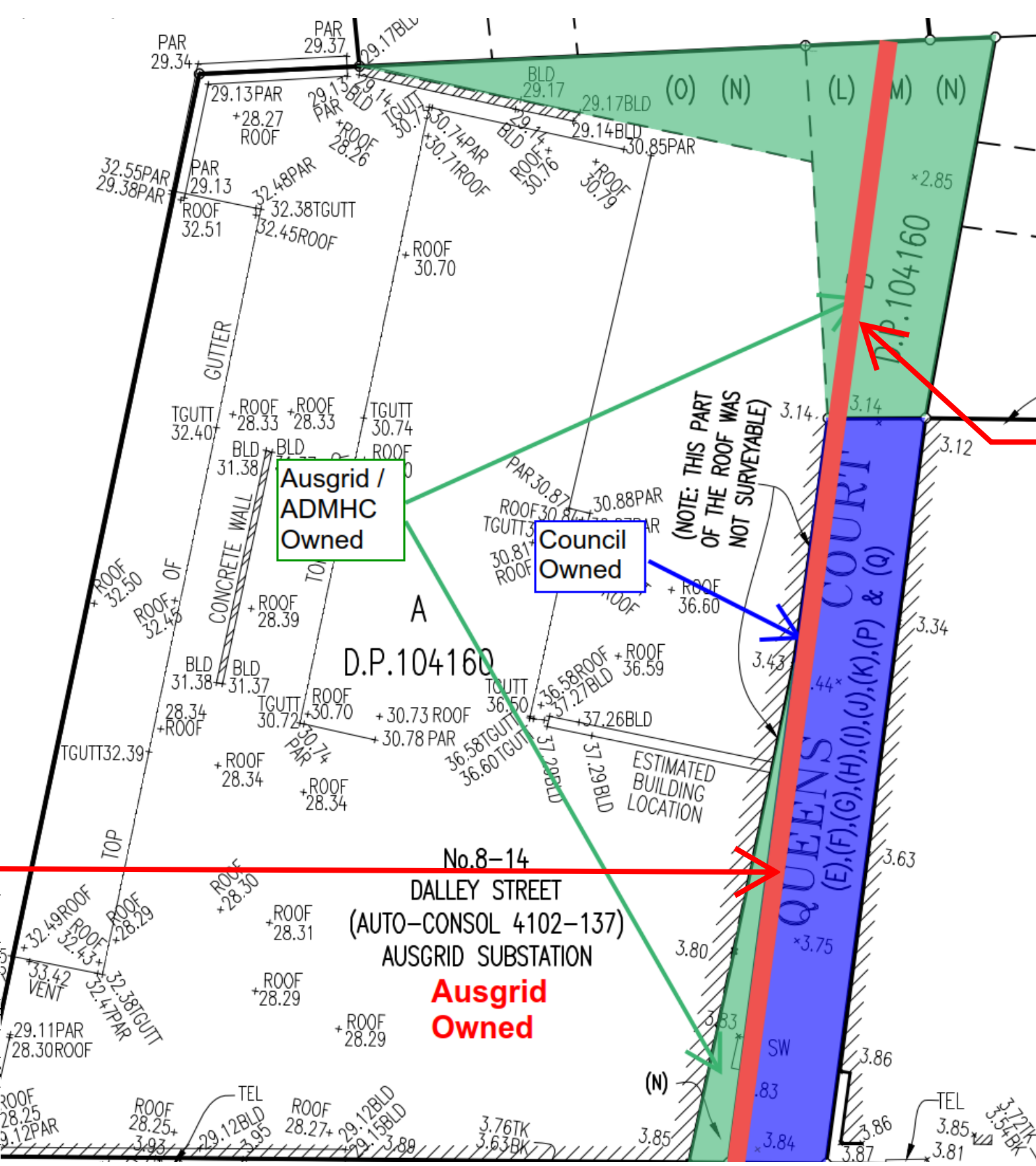
3D Pinned

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
B	12/04/19	IR	JM	F
A	26/10/18	CAL	CAL	C

Rev	Date	By	Chkd	Appd
C	15/07/19	IR	JM	F
B	12/04/19	IR	JM	F
A	26/10/18	CAL	CAL	C

Drawing Title		Scale at B1	
tt Street osed re-development, ey		As indicated	
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)
- (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 ENCRANCHING 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.
- NO SERVICES OR UNDERGROUND SERVICES SEARCH HAS BEEN UNDERTAKEN. SERVICES SHOWN ARE BASED ON VISIBLE SURFACE INDICATORS EVIDENT AT THE DATE OF SURVEY & ARE CHARTED AS A GUIDE TO THE POSITION & NATURE OF THE SERVICE. ALL SERVICE AUTHORITIES SHOULD BE CONTACTED PRIOR TO ANY DEVELOPMENT.
- 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
 - 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 PILLAR
 - 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

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]