

Planning agreement

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

and

AM Darlinghurst Investment Pty Ltd
ACN 633 798 384

58-76 Oxford Street Darlinghurst, 82-106 and 110-122 Oxford
Street Darlinghurst

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THIS PLANNING AGREEMENT is made on
2021.

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) **AM Darlinghurst Investment Pty Ltd** ACN 633 798 384 (together, the **Developer**).

BACKGROUND

- (A) The City is the owner of the Land. The Developer is the lessee of the Land.
- (B) The Developer intends to undertake the Development on the Land.
- (C) 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)*.

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

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.

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'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.

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).

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

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:

- (a) in relation to the Public Benefits 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 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 (as amended from time to time).

Development Applications 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 Applications.

Development Consents means the consents granted to the Development Applications for the Development and includes all modifications made under section 4.55 of the Act and/or by way of amending development applications (subject to it being agreed by the parties that either of the Development Consent can be amended by way of an amending development application.)

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.

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)*.

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.

Group 1 means 56-76 Oxford Street, Darlinghurst.

Group 2 means 82-106 Oxford Street, Darlinghurst.

Group 3 means 110-122 Oxford Street, Darlinghurst.

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 a 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 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.

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.

Occupation Certificate has the same meaning as in the Act.

Personal Information means:

- (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* (NSW);
- (b) health information within the meaning of the *Health Records and Information Privacy Act 2002* (NSW); and
- (c) any information which does not fall within the scope of paragraphs (a) and (b) above, but is personal information within the meaning of the *Privacy Act 1988* (Cth).

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

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information*

Privacy Act 2002 (NSW); the Spam Act 2003 (Cth), the Do Not Call Register Act 2006 (Cth) and any other applicable legislation, regulations, guidelines, codes and the City's 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.

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

Standards means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 4 of Schedule 3.

Subdivision of Land has the same meaning as in the Act.

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.

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 Items 5 and 6 of Schedule 2 to this document.
- (b) In the event that the Development Consents impose an obligation on the Developer to pay contributions under sections 7.11 or 7.12, Council agrees that it will apply the Attributed Value of contributions made under this planning agreement in order to offset the Developer’s obligations to pay those contributions under the Development Consent.

2.4 **City rights**

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

- (a) grant Development Consents 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**

- (a) 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 has a registered interest in the 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; and
 - (iv) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (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. The Developer's obligation to provide the Public Benefits only commences for each Group after the relevant Development Application is approved.

5.2 **Landowners Consent**

- (a) The City, as the owner of the Land, agrees to grant all approvals necessary for the Developer to carry out the Public Benefit works, as owner of the land only. This clause does not extend to the City's function as a consent authority and does not fetter their discretion with respect to any approval function that it may have under any legislation.

5.3 **Offsets against public art requirement**

- (a) The parties acknowledge that from time to time the City may seek to impose a requirement for the Developer to deliver public art in relation to the Land and/or the Development.
- (b) The parties agree that in the event that Council seeks to impose a requirement for the Developer to provide public art in connection with the Land and/or Development, under this agreement:

- (i) the delivery of the Developer's Works is to be taken to satisfy a portion of the Developer's obligation to provide public art up to a value of \$300,000.00 (being one half of the value of the public art that Council otherwise seeks that the Developer contribute in relation to the Land and/or Development); and
- (ii) the Developer will endeavour to deliver public art generally in accordance with the draft public art plan at Annexure B, (satisfying the second half of the value of the public art that Council otherwise seeks that the Developer contribute in relation to the Land and/or Development).

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, and all hold points inspections have been approved by the City 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) evidence that TfNSW have classified the relevant sections of any Shared Zones and installed the relevant signage separately applicable to that stage;
- (c) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to assume responsibility for the Developer's Works; and
- (d) at least two sets of the "as built" drawings of the Developer's Works, including one set in electronic format, prepared in accordance with the City's Public Domain Manual and Technical Specifications or other policies as applicable,

(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 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; or
 - (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 6.4(a)(i).
- (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.

6.4 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 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 Consents or this document then the City may either:
- (i) complete the Public Benefits itself; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consents and this document,

and may, acting reasonably, recover all costs of and reasonably incidental to that work from the Developer. 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 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 4.2.2 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), 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 by the City 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 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 Land;
 - (ii) warrants that it has obtained all consents to the registration of this document on the certificate of title to the 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 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; and
 - (B) 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 Release of this document

If this agreement is terminated, one or both of the Development Applications have not been approved and review and appeal rights have been exhausted or have expired, or if one or both of the Development Application have been withdrawn or the City is satisfied that the Developer has provided all Public Benefits and otherwise complied with this document then the City must promptly do all things reasonably required to remove this document from the relevant certificate of title to the Land.

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) Subject to clause 10.2(b), following each anniversary of the date of the Guarantee (the "Adjustment Date") and at any time prior to the expiry of the Defects Liability Period, the Guarantee Amounts are to be adjusted to a revised amount by applying the following formula:

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

where:

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

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

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

B is the Index Number most recently published:

- (i) before the date of the Guarantee for the first Adjustment Date; and
- (ii) before the preceding Adjustment Date for every subsequent Adjustment Date

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.

- (b) If the Guarantee Amount is adjusted under clause 10.2(a), the Developer is not required to provide the City with a replacement Guarantee for that revised Guarantee Amount until such time as the City notifies the Developer that the City is ready to exchange the then current Guarantee held by the City, following which the City and the Developer must promptly exchange the then current Guarantee held by the City with a replacement Guarantee for that revised Guarantee Amount from the Developer.

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 2.2 of Schedule 3 of this document (provision of detailed design drawings and detailed costs estimate);
 - (ii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.4(a);
 - (iii) an Insolvency Event occurs in respect of the Developer;
 - (iv) the Developer fails to deliver the Public Benefits in accordance with clause 6.4(b);
 - (v) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document;
 - (vi) 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 (or such later time as agreed by the City in writing);

- (vii) the Developer's Works do not reach Completion within 48 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). However, the public road cannot be closed for a period exceeding 12 months;
 - (viii) the City, acting reasonably, 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, acting reasonably, 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, 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, acting reasonably, 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.

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 subclause 10.5(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 6.4(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.

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 to attempt to resolve the Dispute.
- (c) The Developer's Representative and the City's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the City's Representative 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 Land without:
 - (i) the prior written consent of the City; and

- (ii) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City;
- (b) On and from registration of this document in accordance with clause 9:
 - (i) The Developer may register a plan of strata subdivision, 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;
 - (ii) 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 Developer's interest in the Land without:
 - (A) the prior written consent of the City (which must not be unreasonably withheld by the City); and
 - (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City, acting reasonably.
- (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.

14. **TERMINATION**

- (a) The City may terminate this document by notice in writing to the Developer if one or both of the Development Applications have not been approved and review and appeal rights have been exhausted or have expired, or if one or both of the Development Consents lapses or one or both Development Consents is surrendered by the Developer.
- (b) If the City terminates this document 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 promptly, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land.

15. **CONFIDENTIALITY, DISCLOSURES AND PRIVACY**

15.1 **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 15.2 or 15.3.

15.2 **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 15.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 15.2(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 15.2(b)(i).

15.3 **Disclosures required by law**

- (a) Subject to clause 15.3(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 15.3(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.

15.4 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.

15.5 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.

15.6 Media releases

- (a) 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.
- (b) Upon receipt of a request from the Developer to issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits, Council must use its best endeavours to respond promptly.
- (c) This clause does not apply to any documents or information already publicly available.

15.7 Privacy

- (a) Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Developer:
 - (i) must not, directly or indirectly collect, use or disclose any Personal Information under or in connection with this document except to the extent necessary to perform its obligations under this document; and

- (ii) must in the delivery of the Public Benefits and the performance of all its other obligations under this document comply with the Privacy Laws and must not do any act or engage in any practice that would breach the Privacy Laws or which if done or engaged in by the City would be a breach of any Privacy Laws.

16. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. 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 the same day the email was sent, provided that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.
- (b) A person's address and email address are those set out in Item 3 and Item 4 of 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.

17. **CHAIN OF RESPONSIBILITY**

- (a) In this clause:
 - (i) **Chain of Responsibility** means legislation that extends liability for Road Law offences to all parties whose actions, inactions or demands influence conduct on the road particularly in relation to speed, fatigue, vehicle standards, vehicle roadworthiness, load restraint, and mass and dimension.
 - (ii) **HVNL** means the *Heavy Vehicle National Law* (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.
 - (iii) **Heavy Vehicle** has the meaning given to it in the HVNL.
 - (iv) **Road Law** means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the HVNL.
- (b) The Developer must in connection with any activity carried out under or in relation to this document:
 - (i) comply with all Chain of Responsibility legislation and must ensure that any activity relating to a Heavy Vehicle used in connection with this document is undertaken in accordance with all applicable Chain of Responsibility obligations (including any fatigue, speed, mass, dimension or load restraint requirements);

- (ii) not ask, direct or require (directly or indirectly) the driver of a Heavy Vehicle or a party in the Chain of Responsibility to do or not do something the Developer knows, or ought reasonably to know, would have the effect of causing the driver to contravene their Chain of Responsibility obligations, including to breach any fatigue, speed, mass, dimension or load restraint requirements;
- (iii) ensure that any subcontractors (where any Heavy Vehicle activities are sub-contracted under this document) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 17(b).
- (c) The Developer will ensure that it has proper processes in place to manage its Chain of Responsibility obligations.
- (d) The Developer must provide the City, upon request, with all information and documentation reasonably required by the City to monitor or audit compliance with this clause (including permitting inspections of vehicles and business premises).

18. **GENERAL**

18.1 **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.

18.2 **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.

18.3 **Liability for expenses**

- (a) The Developer must pay its own and the City's reasonable 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.

18.4 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.

18.5 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.

18.6 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.

18.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this 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.

18.8 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.

18.9 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.

18.10 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.

18.11 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.

18.12 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.

18.13 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.

18.14 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.

18.15 **Counterparts**

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	<p>Group 1 - Folio Identifier 3-12/6520 known as 58 – 76 Oxford Street Darlinghurst – relating to D/2020/1071 (PAN-39887)</p> <p>Group 2 - Folio Identifier 1/815188 known as 82 – 106 Oxford Street Darlinghurst – relating to D/2020/1071 (PAN-39887)</p> <p>Group 3 - Folio Identifier 2/815188 known as 110-122 Oxford Street Darlinghurst – relating to D/2020/1072 (PAN-40112)</p>
2.	Development	<p>D/2020/1071 (PAN-39887) - Alterations and additions to 2 groups of existing buildings for mixed use development and associated signage strategy. The proposed uses include retail premises, food and drink premises, and tenancies for cultural and creative uses on the lower ground and ground levels, and commercial offices on the levels above. The proposed hours of operation of the tenancies on the lower ground and ground levels are 7.00am - 10.00pm, Mondays to Sundays inclusive. The sites also have a frontage to Foley Street, Crown Street, and Palmer Street.</p> <p>D/2020/1072 (PAN-40112) - Use of the existing building as a mixed use development and associated alterations and additions, and signage strategy. The proposed uses include a 75 room hotel, retail premises, food and drink premises, and tenancies for cultural and creative uses on the lower ground and ground levels. The proposed hours of operation for the tenancies on the lower ground and ground levels are 7.00am – 10.00pm, Mondays to Sundays inclusive. The site also has a frontage to Foley Street.</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>Email: gjahn@cityofsydney.nsw.gov.au</p>

4.	Developer's Representative	<p>Name: Vincent Santos, Senior Development Manager TOGA</p> <p>Address: Level 5, 45 Jones Street, Ultimo NSW 2007</p> <p>Email: toga@toga.com.au</p>
5.	Development Applications	D/2020/1071 (PAN-39887) and D/2020/1072 (PAN-40112)
6.	Guarantee Amount	<p>A total amount of \$1,479,000, comprised of two Guarantees:</p> <ul style="list-style-type: none"> • \$787,255 for DA/2020/1071 (Group 2) • \$691,745 for DA/2020/1072 (Group 3)
7.	Guarantee Amount Due Date	<ul style="list-style-type: none"> • \$787,255– Prior to execution of this document by all parties or prior to activation of the approved development consent D/2020/1071 (Group 2), whichever is later. • \$691,745 – Prior to execution of this document by all parties or prior to activation of the approved development consent D/2020/1072 (Group 3), whichever is later.

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) No</p> <p>(b) Yes</p> <p>(c) Yes</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>	Not applicable.
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 and Annexure A.
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>Section 7.11 not excluded</p> <p>Section 7.12 not applicable</p> <p>Section 7.24 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 in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	The Attributed Value for each element of the Public Benefits are taken to be in satisfaction of development contributions that would otherwise be required under section 7.11 of the Act in respect of the Development.
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)	Payment of Guarantee
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Not applicable.
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Completion of Developer's Works is required prior to the issue of any Occupation Certificate for Group 2 and Group 3.
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.	Developer's Works	The value of the Developer's Works are estimated at \$1,479,000 (comprised of \$787,255 for works under DA/2020/1071 within Group 2 and \$691,745 for works under DA/2020/1072 within Group 3) and will be determined following completion of the process set out in clause 2.2 of Schedule 3.	Developer's Works located within Group 2 and carried out under DA/2020/1071 must be completed prior to the issue of any Occupation Certificate for Development at Group 2 This does not include any Occupation Certificate issued only in relation to Big Poppa Enterprises Pty Ltd and/or its tenancy of Ground Floor & Basement, 96 Oxford St, Darlinghurst NSW 2010 and does not include any other building or tenancy that is located within Group 2. Developer's Works located within Group 3 and carried out under DA/2020/1072 must be completed prior to the issue of any Occupation Certificate for Development at Group 3.	Upgrade to Foley Street to create a shared zone for pedestrians and motorists including new paving and kerb treatments to Foley Street, extending footpath across Foley Street intersections, installing removable and fixed bollards on Foley Street and Stormwater works per the plans, stages and specifications showing the nature and extent of the required Developer's Works as at the date of this document are contained in Annexure A to this document and any additional details as required in the Development Consents.

			<p>The kerb extensions and pram ramps at Palmer Street must be completed prior to the issue of the first Occupation Certificate for Development at Group 2 or 3, whichever is the earlier.</p>	
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2. **FINAL DESIGN OF THE DEVELOPER'S WORKS**

2.1 **Scope of Developer's Works**

As at the date of this document, the nature and extent of the required Developer's Works is set out in Annexure A to this document. The parties agree that further design refinement of the Developer's Works may be necessary, having regard to:

- (a) the extent to which the design of the Developer's Works has been approved by the City;
- (b) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document, including Contamination works;
- (c) any changes required as a result of public consultation of the Developer's Works;
- (d) the extent of any refinement of the design of the Developer's Works permitted by clause 2.12 of Schedule 3;

- (e) any modification to the Development Consents made and approved under section 4.55 of the Act or any other development consent granted that relates to the Developer's Works; and
- (f) the reasonable requirements of the City, including in regard to the Standards.

2.2 **Final design of Developer's Works**

- (a) Within 3 months of the commencement of this document (or a later time approved by the City in writing) but prior to the issue of the Stage 2 Construction Certificate for the Development, 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 Annexure A; 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. 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 20 Business Days (or further time, as agreed in writing between the parties) 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 2.2 of Schedule 3.
- (d) If the Developer:
 - (i) fails to prepare the detailed design drawings or detailed costs estimate (and has not requested additional time to provide these documents to which the City has agreed in writing); or
 - (ii) does not provide further information or modify the detailed design drawings or detailed costs estimate (and has not requested additional time to provide these documents to which the City has agreed in writing),

and the Developer has not notified a dispute about the Design of the Developer's Works in accordance with clause 11 of this document in

accordance with this clause 2.2 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 2.2 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 Guarantee Amount estimated at the date of this document.

2.3 Preparation of and changes to construction design drawings

- (a) Following approval of the detailed design drawings by the City in accordance with clause 2.2 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 2.2 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 2.3(b)(iii) of Schedule 3 does not significantly increase:
 - (A) the cost of that element of the Developer's Works by more than 10%; 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 2.3(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 2.3(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 2 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.

3. CONSTRUCTION OF DEVELOPER'S WORKS

3.1 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.

3.2 Approvals and consents

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 Consents.

3.3 **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) perform a site investigation/s into Contamination of the area where the Developer's Works are to be carried out, prior to the detailed design of the Developer's Works. Site investigation/s, and any sampling and analysis, must be conducted by a suitably qualified and experienced environmental consultant and samples sent to a National Association of Testing Authorities accredited laboratory for analysis;
- (d) prepare a remedial action plan that, if Contamination is identified on the site where the Developer's Works are to be carried out, includes for the management and disposal of any Contamination;
- (e) ensure that any site remediation and validation required for the management and disposal of any Contamination is executed in an appropriate manner;
- (f) appoint an accredited site auditor in event that they are required as a result of Contamination identified on the site where the Developer's Works are to be carried out;
- (g) the site investigation/s, remedial action plan, and site remediation and validation is to be carried out in accordance with the NSW Environmental Protection Authority's statutory guidelines under the *Contaminated Land Management Act 1997*;
- (h) 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
- (i) comply with all reasonable directions of the City in respect to construction of the Developer's Works.

3.4 **Inspections by the City**

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

- (a) Issue a set of hold points with the approval of the Plans under Clause 3 of Schedule 3; and

- (b) inspect the Developer's Works in accordance with the hold points during the course of construction at reasonable times and on reasonable notice; and
- (c) 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.

The Developer must ensure that it adheres to all hold point inspections during construction.

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.

4. **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
- City of Sydney Public Domain Manual

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
Authorised delegate pursuant to
section 377 of the *Local Government
Act 1993*

Name

Position of officer

456 Kent Street, Sydney NSW 2000
Address of witness

EXECUTED by **AM Darlinghurst
Investment Pty Ltd** ACN 633 798
384 in accordance with s127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE A

Public Benefits

Additional Plans

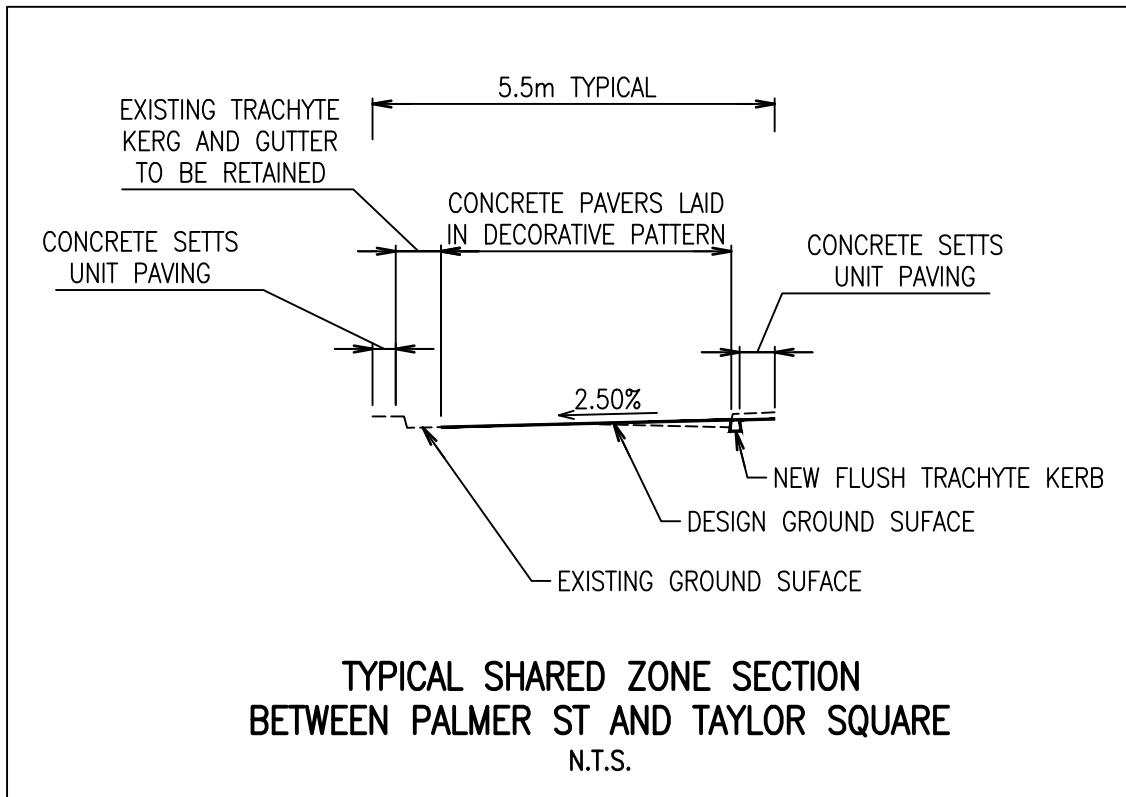
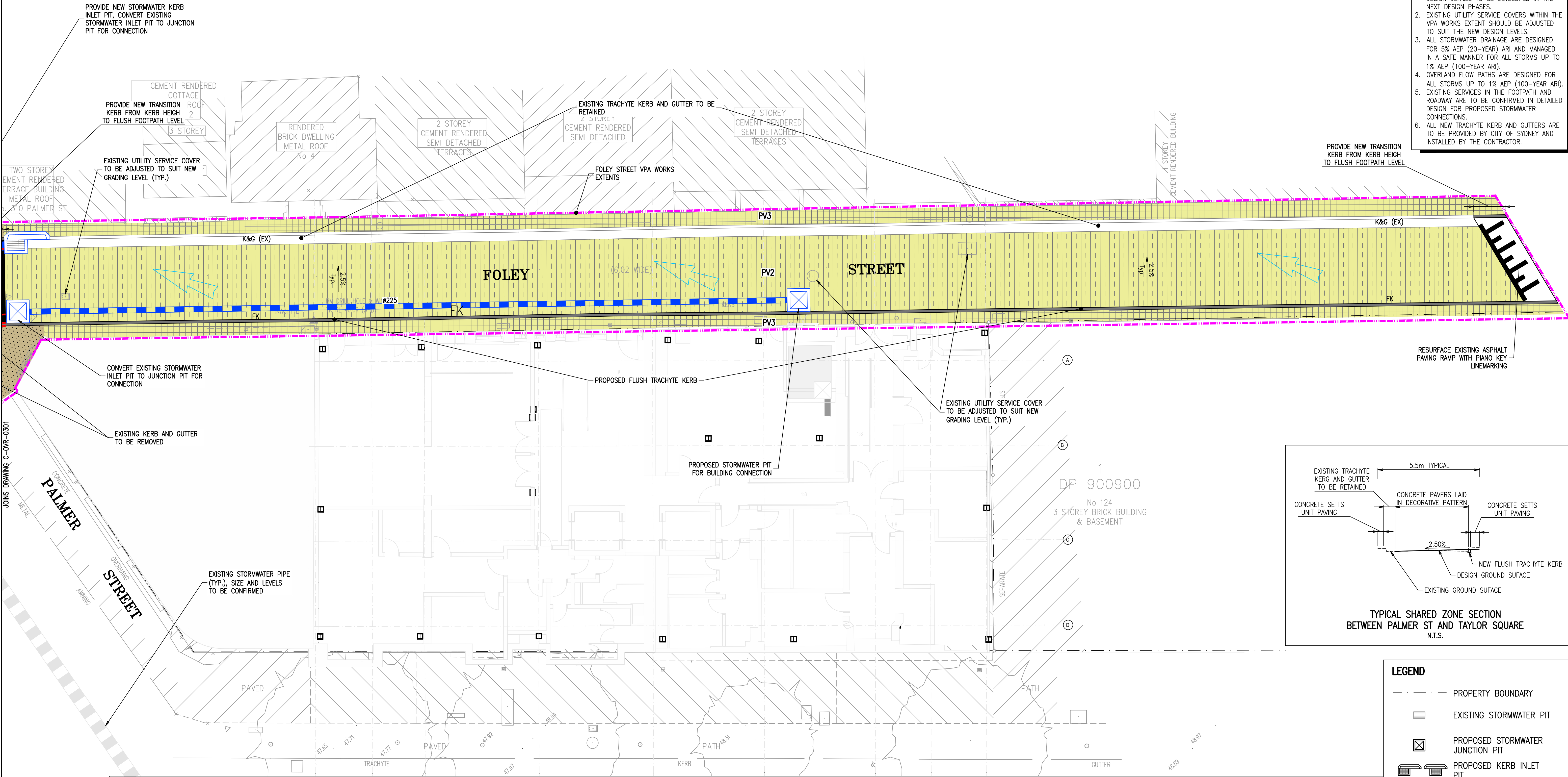
- a) Foley Street Works General Arrangement Plans by Robert Bird Group
- b) Foley Street Upgrade Concept Plans by City of Sydney
- c) Proposed Signposting and Linemarking Arrangement Dwg No 001 and 002 Rev A by Parsons Brinckerhoff

Developer's Works

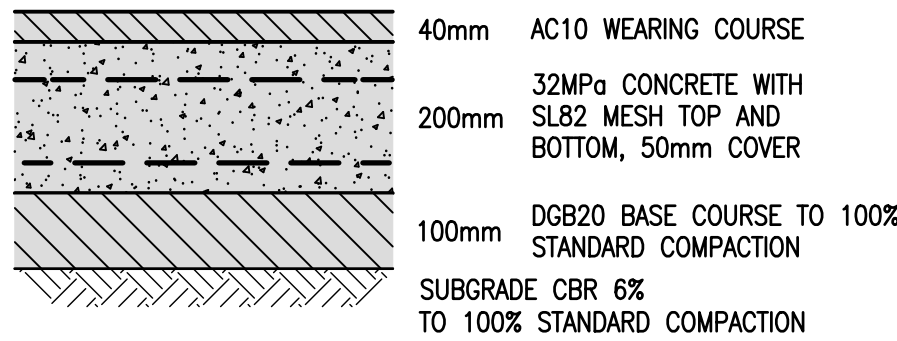
The Developer's Works will include the following elements to be delivered in accordance with the document:

- (a) Demolition, excavation and remediation if required to be fit for purpose.
- (b) Construction of the civil and landscape works required to deliver the shared zone including but not limited to road and footpath pavements, kerb and gutter, stormwater drainage and pits, street lighting, signage, line marking and street furniture.
- (c) Provision and adjustment of utility services such as water, electricity, gas, NBN and sewer as required.
- (d) Integration of the Developer's Works into the existing City infrastructure to the extent as indicated on the General Arrangement Plans.

- NOTES:**
1. THIS PLAN IS A CONCEPT DESIGN ONLY. DESIGN DETAILS TO BE DEVELOPED IN THE NEXT DESIGN PHASES.
 2. EXISTING UTILITY SERVICE COVERS WITHIN THE VPA WORKS EXTENT SHOULD BE ADJUSTED TO SUIT THE NEW DESIGN LEVELS.
 3. ALL STORMWATER DRAINAGE ARE DESIGNED FOR 5% AEP (20-YEAR) ARI AND MANAGED IN A SAFE MANNER FOR ALL STORMS UP TO 1% AEP (100-YEAR ARI).
 4. OVERLAND FLOW PATHS ARE DESIGNED FOR ALL STORMS UP TO 1% AEP (100-YEAR ARI).
 5. EXISTING SERVICES IN THE FOOTPATH AND ROADWAY ARE TO BE CONFIRMED IN DETAILED DESIGN FOR PROPOSED STORMWATER CONNECTIONS.
 6. ALL NEW TRACHYTE KERB AND GUTTERS ARE TO BE PROVIDED BY CITY OF SYDNEY AND INSTALLED BY THE CONTRACTOR.

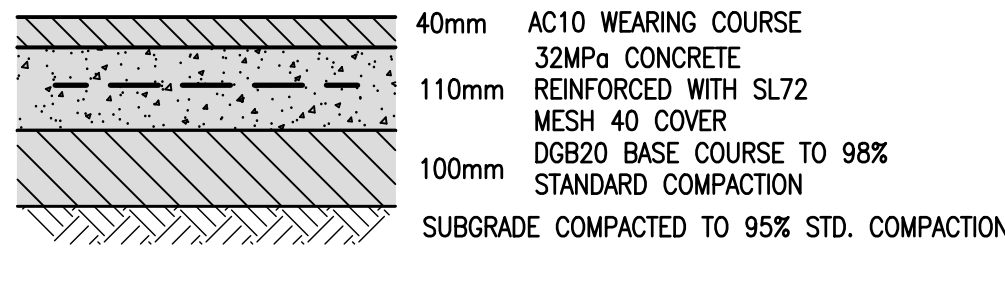


- LEGEND**
- PROPERTY BOUNDARY
 - EXISTING STORMWATER PIT
 - PROPOSED STORMWATER JUNCTION PIT
 - PROPOSED KERB INLET PIT
 - PROPOSED STORMWATER PIPE
 - INDICATIVE OVERLAND FLOW DIRECTION
 - PV1 PAVEMENT TYPE P1 - ASPHALT PAVING
 - PV2 PAVEMENT TYPE P2 - CONCRETE PAVERS LAID IN DECORATIVE PATTERN
 - PV3 PAVEMENT TYPE P3 - CONCRETE SETTS UNIT PAVING
 - PV4 PAVEMENT TYPE P4 - CONCRETE VEHICULAR RAMP



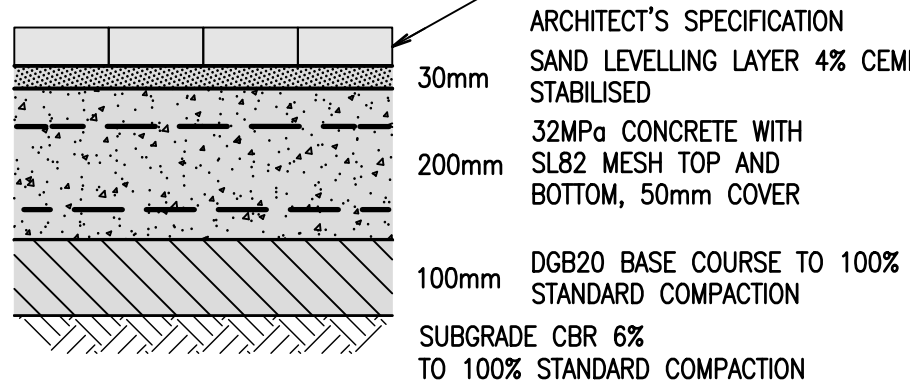
TRAFFICABLE AREA

PV1 - ASPHALT PAVING TYPICAL DETAIL
SCALE 1:10

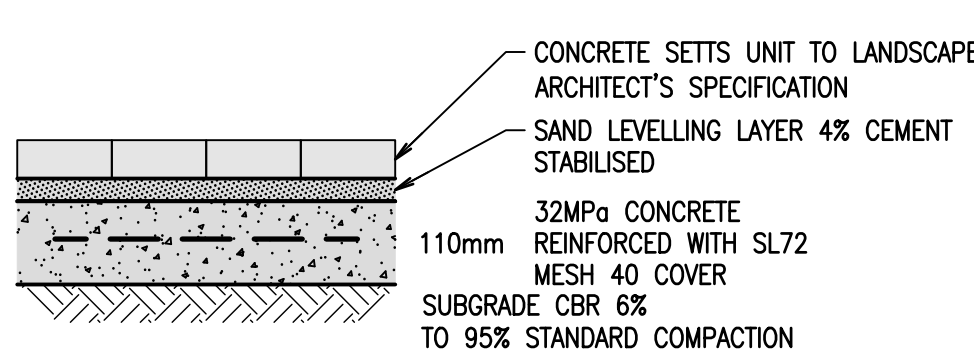


PEDESTRIAN AREA

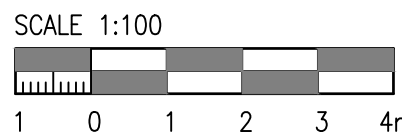
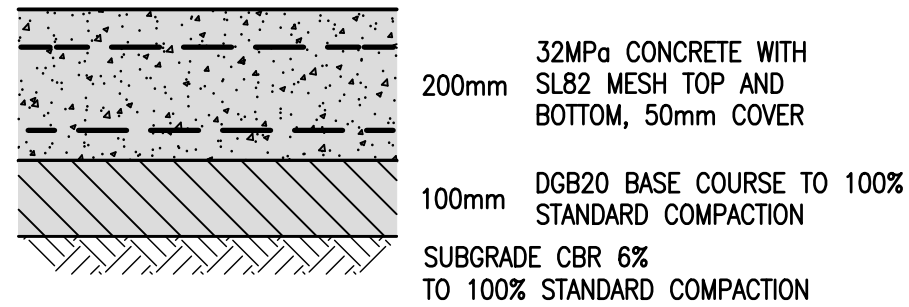
PV2 - CONCRETE PAVES LAID IN DECORATIVE PATTERN TYPICAL DETAIL
SCALE 1:10



PV3 - CONCRETE SETTS UNIT PAVING TYPICAL DETAIL
SCALE 1:10



PV4 - CONCRETE VEHICULAR RAMP TYPICAL DETAIL
SCALE 1:10



Rev	Revision Description	By	App	Date
P1	ISSUED FOR INFORMATION	CH	CW	22.07.21
P2	ISSUED FOR INFORMATION	CH	CW	23.08.21
P3	ISSUED FOR INFORMATION	CH	CW	01.09.21

Rev	Revision Description	By	App	Date
P1	ISSUED FOR INFORMATION	CH	CW	22.07.21
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P3	ISSUED FOR INFORMATION	CH	CW	01.09.21

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Structural, Civil & Construction Engineering Consultant

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Web: www.robertbird.com
ACN 010 580 248



Client

FOLEY ST VPA WORKS - GENERAL ARRANGEMENT PLAN - SHEET 2 OF 2

Project
DARLINGHURST COLLECTION
56-76, 82-106 & 110-122 OXFORD STREET, DARLINGHURST NSW 2010

Scale at A1
AS SHOWN
Date
01.09.21

Drawn
C.HUANG
Designer
C.HUANG

Design Checker
Approved
C.WAITE

FOR TENDER NOT FOR CONSTRUCTION

Drawing Number
C-OVR-0302

Revision
P3

Foley Street upgrade – stages 2 & 3

Introduction

The City of Sydney is committed to supporting a vibrant Oxford Street Cultural Quarter to achieve the Sustainable Sydney 2030 vision for a cultural and creative city.

As part of the commitment, we are upgrading Foley Street in Darlinghurst to rejuvenate the laneway between Crown Street and Taylor Square. The upgrade will enhance safety for pedestrians and encourage new local business in the laneway.

We would like to hear your feedback on our proposed plans.

Have your say

The proposed design will be on exhibition until Thursday 7 November 2013.

View plans and have your say online at: sydneyyoursay.com.au

Or drop in and see the display at our One Stop Shop at Town Hall House, Level 3, 456 Kent Street, Sydney.

Or send your comments to Kee Li, our Community Engagement Officer:

☎ 02 9265 9333
✉ kli@cityofsydney.nsw.gov.au

🏛 City of Sydney
GPO Box 1591
Sydney NSW 2001

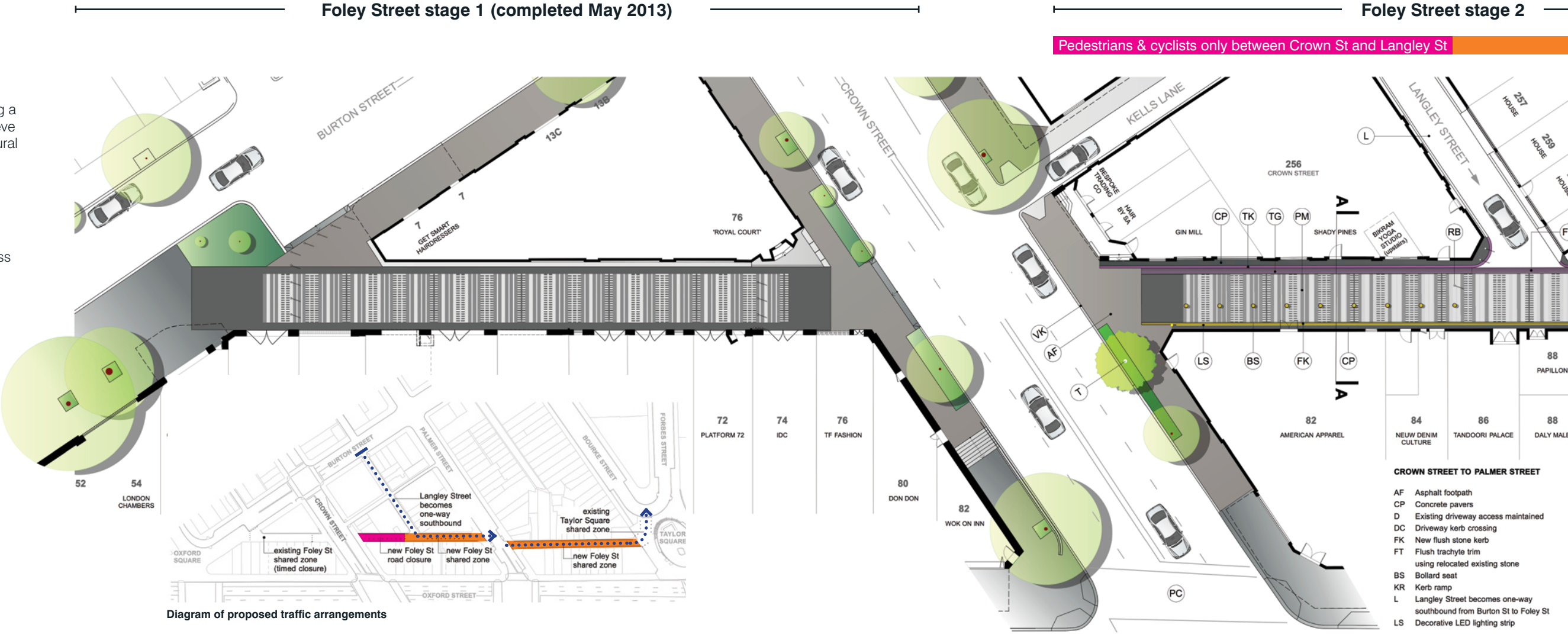
For General Enquiries:

☎ 02 9265 9333
(24 hours, 7 days a week)

📞 02 9265 9222

✉ council@cityofsydney.nsw.gov.au

🌐 www.cityofsydney.nsw.gov.au



The project at a glance

The City is upgrading Foley Street, Darlinghurst from Crown Street to Taylor Square. The project seeks to encourage public domain activation, improve pedestrian safety and enhance the amenity of the area.

Foley Street is currently used by vehicles for off-street parking, loading and garbage removal. It has one-way vehicle access in an east-bound direction.

The concept for the upgrade includes:

- closure of Foley Street between Crown and Langley Street, and
- creation of a Shared Zone (shared use between vehicles and pedestrians) on Foley Street from Langley Street to Taylor Square.

Access will be maintained for delivery and service vehicles from Burton Street – via Langley Street and off Palmer Street.

Design rationale

This part of the upgrade will be carried out as stage 2 and 3, following the successful delivery of the stage 1 upgrade for Foley Street between Burton Street and Crown Street.

The concept design for Foley Street proposes:

- Closing Foley Street from Crown Street to Langley Street, providing pedestrian-only access at all times;
- Creating a shared zone from Langley Street to Taylor Square for pedestrians and motorists to share at all times;
- Making Langley Street one-way with southbound traffic;
- Raising the Foley Street pavement to the footpath level;
- Extending the footpath across Foley Street near the intersection with Crown Street;
- Extending the footpath across Foley Street near the intersection with Palmer Street;
- Extending the footpath width on Palmer Street to minimise pedestrian crossing distances;
- Installing removable and fixed bollards on Foley Street between Crown and Palmer streets;
- Adding energy-efficient LED lighting along Foley Street;

- Planting more shrubs and trees on Crown and Palmer Street footpaths; and
- Moving overhead power lines underground.

Materials and finishes

Similar to last year's upgrade of Foley Street between Burton and Crown Streets, the new paving will include a richly textured pavement to complement the distinctive character of the lane. The existing trachyte kerb and gutter stones will be reused and supplemented with new stone where necessary.

Low level lighting will be incorporated to enhance the visual appeal of the space at night and improve pedestrian safety.

Next steps

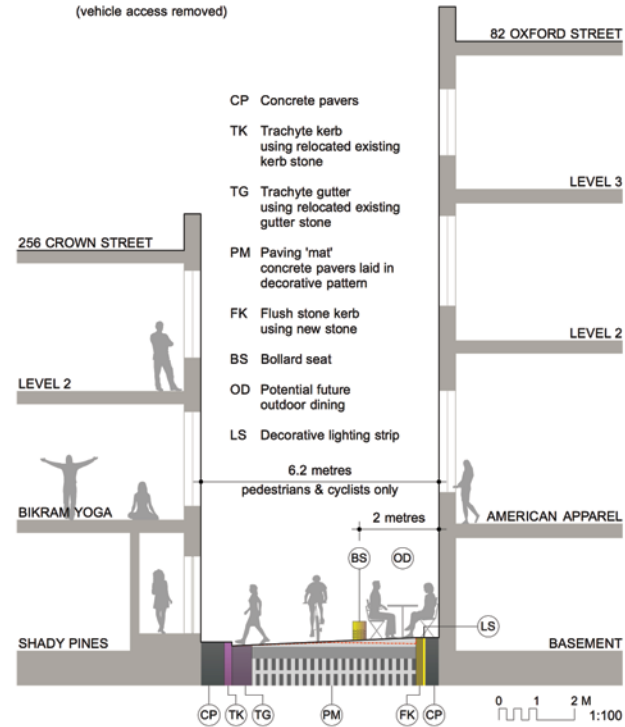
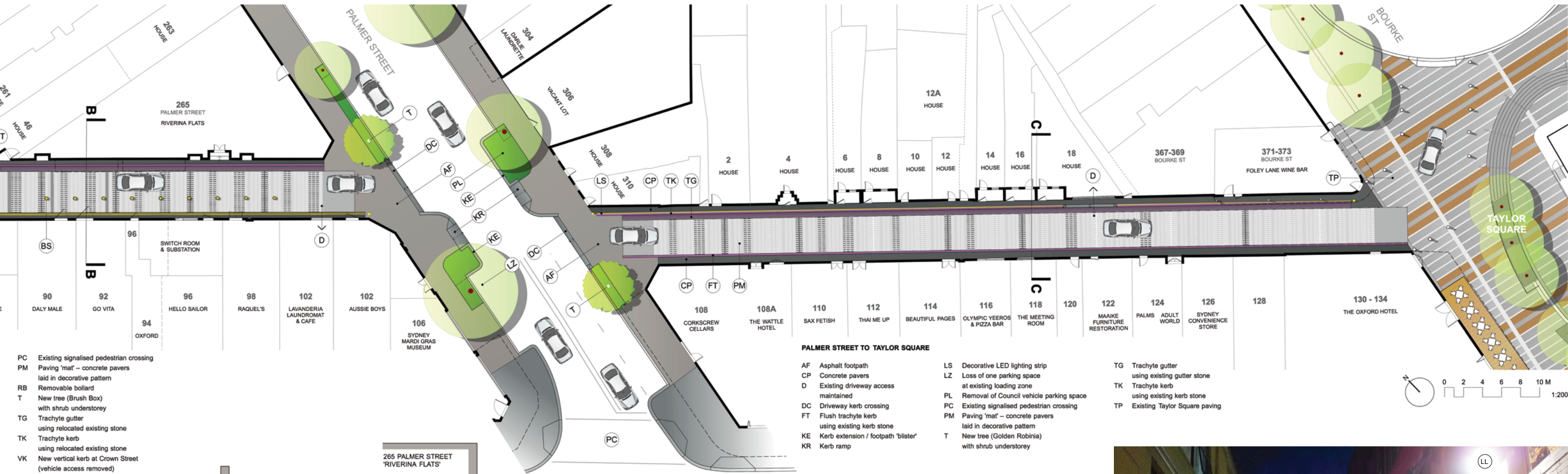
We will use your feedback on the concept plan to develop a detailed design.

The works are scheduled to commence in September 2014 and conclude in early 2015.

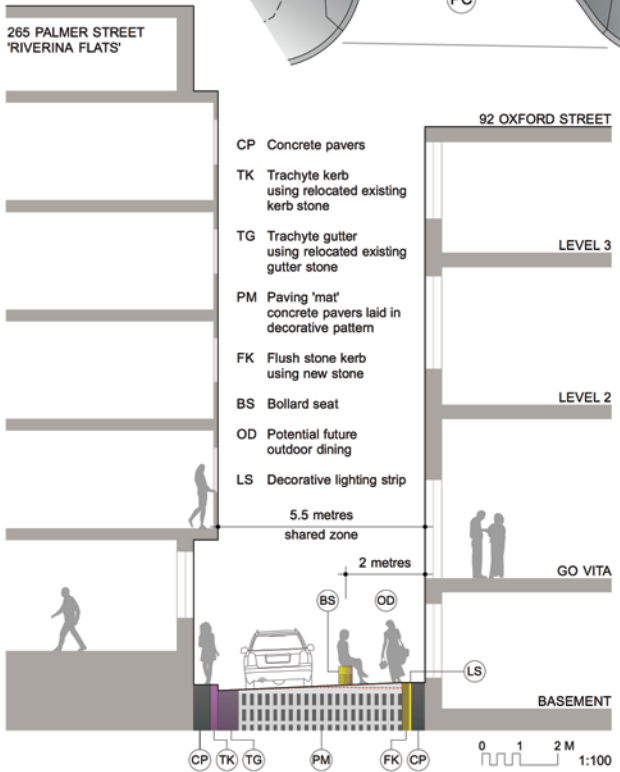
Foley Street stage 3

Shared zone between Langley St and Palmer St

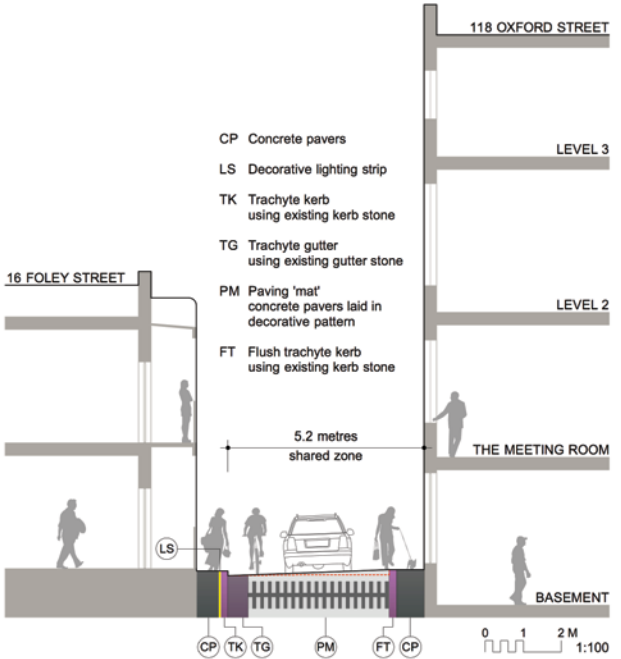
Shared zone between Palmer St and Taylor Square



AA Section at road closure between Crown Street and Langley Street



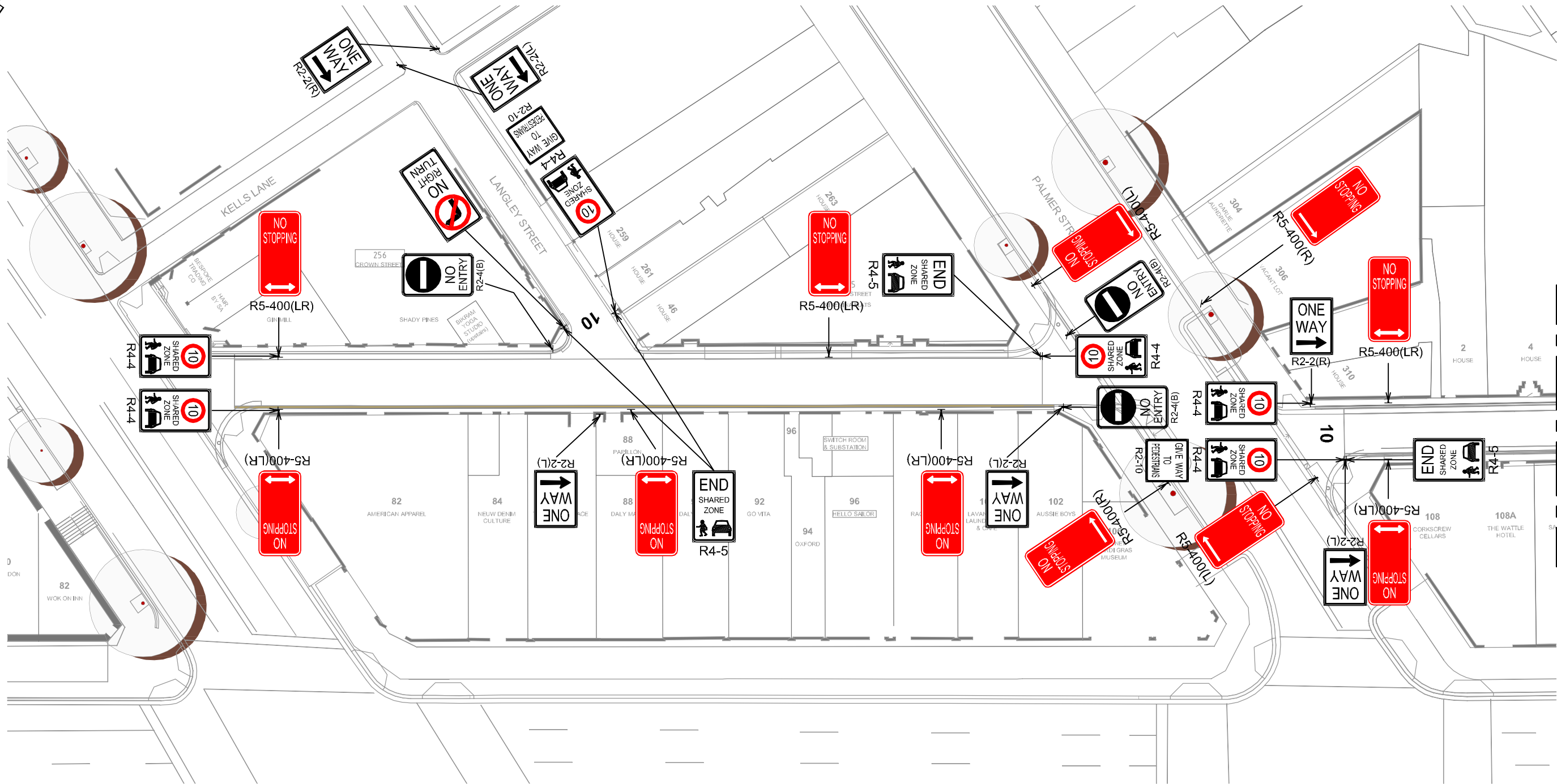
BB Section at shared zone between Langley Street and Palmer Street



CC Section at shared zone between Palmer Street and Taylor Square



Artist's impression of Foley Street road closure (between Crown and Langley Streets) at night



PLAN
SCALE 1:400

ADJOINS SHEET 002

PRELIMINARY ISSUE
NOT FOR CONSTRUCTION

REV	DATE	DESCRIPTION	DRAWN	CHECK	DESIGN	VERIFY
A	15.10.13	ISSUED FOR CONSTRUCTION	DSD	RPW		

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SCALES



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APPROVED FOR AND ON BEHALF OF
PARSONS BRINCKERHOFF AUSTRALIA PTY LIMITED
RICHARD WEST
SIGNED
15.10.13
DATE

PARSONS BRINCKERHOFF
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Sydney NSW 2001
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Telephone +61 2 9272 5100
Facsimile +61 2 9272 5101
Email: sydney@pb.com.au

CLIENT

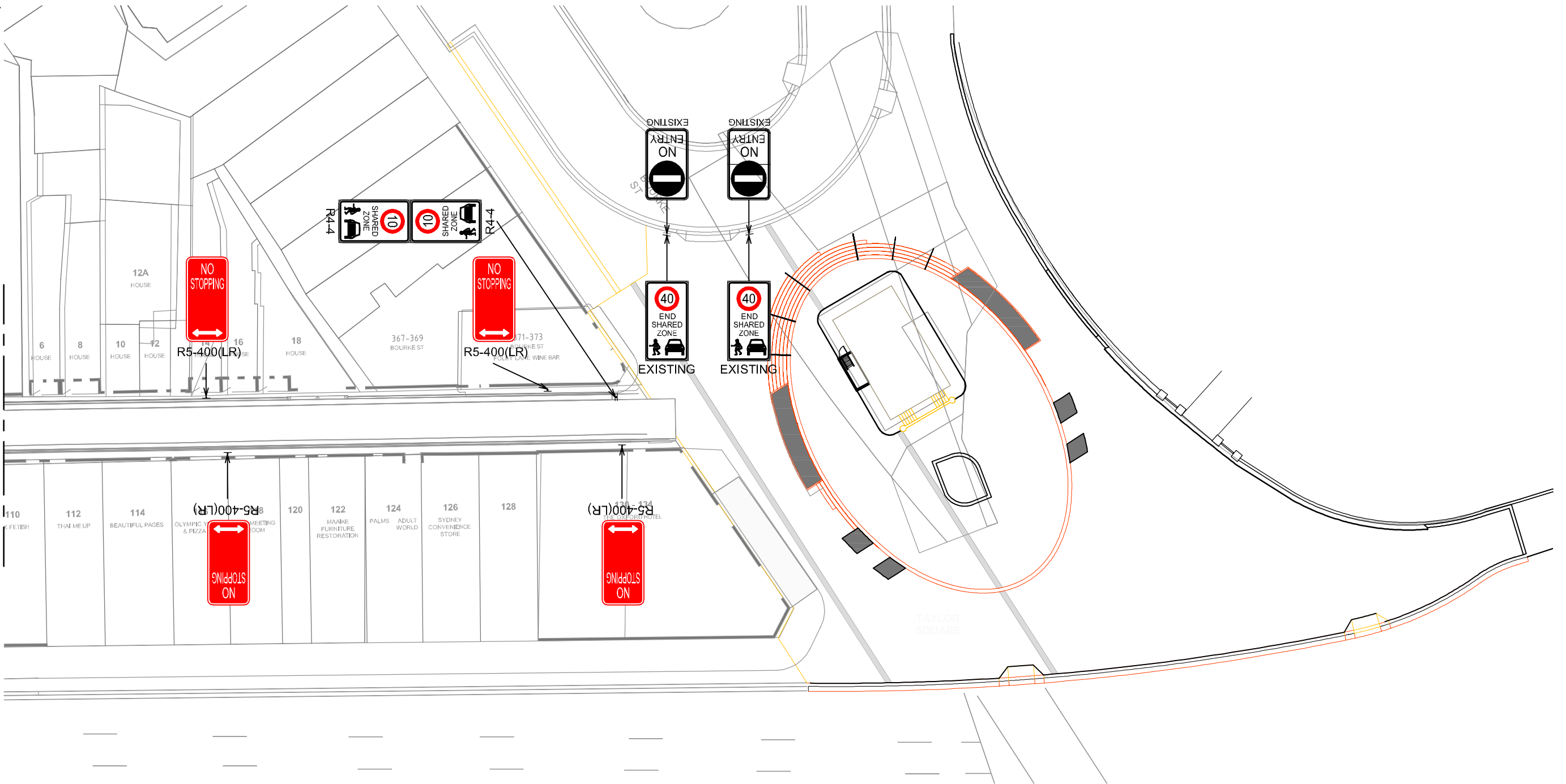
PROJECT

FOLEY STREET UPGRADE
PROPOSED SIGNPOSTING
AND LINEMARKING
ARRANGEMENT

PROJECT No.	DISCIPLINE	NUMBER	REV.
2175016A	-	001	A



ADJOINS SHEET 001



PLAN
SCALE 1:400

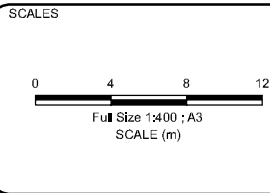
50mm AT FULL SIZE

PRELIMINARY ISSUE
NOT FOR CONSTRUCTION

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RICHARD WEST

SIGNED
15.10.13
DATE

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Australia

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Telephone +61 2 9272 5100
Facsimile +61 2 9272 5101
Email: sydney@pb.com.au

CLIENT

PROJECT			
FOLEY STREET UPGRADE			
PROPOSED SIGNPOSTING AND LINEMARKING ARRANGEMENT			
PROJECT No.	DISCIPLINE	NUMBER	REV.
2175016A	-	002	A

ANNEXURE B

Preliminary Public Art Plan

Revision D – Dated 24 November 2021

Building Two – Oxford & Foley Project

Prepared by Juliet Rosser

1. Background



WE ARE HERE artwork 2013

In 2013 the City of Sydney commissioned Juliet Rosser to curate the *WE ARE HERE* artwork, to be exhibited for 2 years. The fourth artwork as part of the Streetware temporary program of street art commissions by the City of Sydney. The work – collaboratively executed by artists Sarah Howell, Dylan Demarchi, byrd, The Dirt and Gui Andrade – revived lost fragments of the area's history and brought it firmly to the present. The work took its shape from the hundreds of parades that have travelled up Oxford Street. The work was executed using a variety of forms – spray paint, paste up, mixed media, photography, neon signage and collage using historical imagery from the City of Sydney archives.

The work was created to be firmly embedded with a sense of place, referencing the colourful and varied history of the surrounding area. The work focused on locally specific themes, see **Schedule 1** for details of each theme.

1. The Owners and Custodians of the land
2. War and Peace
3. Fame and Shame
4. Freedom and Confinement
5. Commerce and Multiculturalism
6. Protest and Pride
7. From Paddock to Plate
8. Our transcendent tools of trade
9. One People One Destiny
10. Poets and Scoundrels

The *WE ARE HERE* artwork from 2013 is located on the rear façade of Building 2 within the proposed Oxford & Foley project. Since 2013 it has fallen into disrepair, paste ups have become weather damaged, torn and ripped. The paint has faded, and the neon sign is disconnected. Building works have also occurred on site, covering parts of the previous artwork with pipes.

AM Darlinghurst Investment Pty Ltd (The Developer) has engaged Juliet Rosser to curate a new Public Art Project for the location incorporating and inspired by the *WE ARE HERE* 2013 project.

2. Analysis of the Precinct

The Oxford & Foley project comprises three buildings that were constructed between 1911 – 1912 and are locally listed heritage items. The Zink Tailors building located at 56 Oxford Street is listed on the State Significant Heritage register.

Key attributes of the site are as follows:

- Iconic and historic location
- Connected to Sydney CBD (less than 1km East).
- Public Transport at doorstep including a 10 min bus transit to the City Centre.
- View corridors to the CBD and Harbour (on upper levels).
- Walking distance to Hyde Park.
- Linked to Taylor Square.
- Heritage Buildings.
- All buildings are situated on prominent Oxford Street and have rear lane accessibility (Foley Street).

The Site is surrounded by the following key sites:

- Crown Street Surry Hills.
- Oxford Village – ALDI, Fitness First, JB Hi-Fi.
- Taylor Square.
- Darlinghurst Theatre Company.
- St Vincent's Hospital.
- National Art School.
- Oxford Street Bars and Music Entertainment Venues, the Burdekin, Oxford Art Factory, Shady Pines Saloon and Big Poppa's.

The following key stakeholder groups have been identified:

- City of Sydney Council (Both as Landlord under the 99-year Leasehold and Consent Authority).
- Local community and residents.
- Retailers in close-proximity and neighbouring properties.
- LGBTIQ Community.

3. The Proposed Public Art Plan

This preliminary public art plan has been prepared in response to the Public Art provisions within the *Sydney Development Control Plan (DCP) 2012* as well as City of Sydney's *Public Art Policy* and *Interim Guidelines for Public Art in Private Developments*.

It is proposed to curate a second iteration of the WE ARE HERE artwork along the northern (Foley Street) façade of the building at 82-106 Oxford Street Darlinghurst, tentatively titled WE ARE HERE II (STILL). The second iteration of the artwork will be influenced by the themes in the WE ARE HERE artwork from 2013. The works are encouraged to be site specific and connect to the location and history of the area in a meaningful way.

The proposed themes for the next iteration of WE ARE HERE are derived from the original artwork. Artists are invited to interpret the history and distinct local character of the area, connecting with contemporary audiences in innovative and creative ways.

The brief will include detailed information about the extensive research and themes in the 2013 artwork, including the curator statement (**Schedule 2**), theme descriptions, local historian Clive Faro's history of the area relating to the WE ARE HERE 2013 artwork (**Schedule 3**) and reference photos of the original artwork.

The artists will be asked to submit under broad categories but also understanding the themes in the original work: Artists will be asked to submit artistic concepts under the themes of:

1. The Gadigal people and their land
 - The original 'muru' Aboriginal track now Oxford Street
 - Pre-colonial land, flora and fauna
 - Heritage and culture
2. Celebrating identities
 - LGBTIQ Community and Mardi Gras
 - Rich history of multiculturalism
3. The area as a cultural and creative epicentre
 - From the bootleggers, artists to commercial traders, the area has been a rich and creative epicentre
4. WE ARE HERE 2013 artwork, specific inspiration

To continue the through line from one artwork to the next the two bookend hands will be kept. These are the walking hand and the peace hand on the Crown Street and Palmer Street corners, also the colourful geometrics and the neon sign are planned to remain. The works will be assessed by a conservator and will be refreshed where possible to their vibrant originals.



Existing works to be retained from WE ARE HERE 2013

Cnr Foley and Crown Street - WE ARE HERE neon sign, walking hand and geometrics.

Cnr Foley and Palmer Street – peace sign

The building façade is undergoing significant changes, including the removal of the down pipes and redundant air conditioning. The artworks remaining on the façade are quite faded, have ripped and will be impacted by the removal of the pipes. The Developer is also re-surfacing the façade. It is proposed that this new façade will be the canvas for the new artworks.



Green hatched area indicates the proposed zone on the façade for WE ARE HERE II (STILL).

4. Methodology

To source the artists for the façade, a NSW-wide artist Expression of Interest (EOI) call out will be launched through an extensive marketing campaign. We will be seeking works from a range of mediums such as sculptural installation, light art, photography, paint and mixed media. The artists' proposal will need to demonstrate a site-specific connection to the proposed themes.

The artwork delivery will proceed in six stages:

Stage 1: Expression of Interest Stage

Artists will be asked to submit an EOI for the entire zone or a section of the zone. Applications will include:

- Artist/team – CVs of team
- Detailed project description – identifying site specificity and thematic inspiration
- Conceptual visuals
- Indicative project budget

Stage 2: Shortlisted artists presented to The Developer

After the EOI, the curator will select 10-15 artists to present to The Developer. The curator will select artists on the following criteria:

- Relevance and appropriateness of the work to the site and alignment with themes;
- Artist/team experience;
- Standards of excellence and innovation;
- Sustainability of materials and fabrication methods;
- The creative integrity of the work;
- The artists' willingness to take out the appropriate insurances and abide by Work Health and Safety legislation.

Stage 3: The Developer and Curator select artists for design development

The Developer and the Curator will select 5-7 artists to develop their concept design and budget. Each shortlisted artist will be paid \$1,000 for the concept design and development.

Stage 4: Design and Budget Development

The Curator will work with each of the artists to determine what is the best relationship between the artworks on the façade. This process will be a vetting process for the curator to interrogate the artists assumptions around budget, installation and maintenance.

Each artist would not be required to spend more than 20 hours over the four months developing the following:

- Refine concept design
- Develop installation plan for artworks
- Develop maintenance plan for artwork
- Develop budget

The curator will work with the artists and The Developer to identify budget efficiencies in the delivery of the works, such as through equipment costs, permits, engineering etc.

Stage 5: Final artist selection and commission

Shortlisted artists presented to a panel for final selection process. It is proposed the panel could consist of The Developer's representatives as well as other community stakeholders, such as members of the City of Sydney art committee.

The final selection of artists will be 3-5.

Final artists selected will work with the curator and builder on the following:

- Finalise design details
- Finalise installation plan for artworks
- Finalise maintenance plan for artwork
- Finalise budget including additional artist fee

Stage 6: Installation of artworks

Artworks installed on the façade of Foley Street. Once artworks are installed, ownership of the works will be licensed from the artist to The Developer, with the intellectual property (IP) to remain with the original artist.

The Artworks are intended to have a lifespan of at least ten years, and will be a key contributor in the successful delivery of the City's *Public Art Strategy* and *Sustainable Sydney 2030 Plan*.

5. Indicative Budget

	Costs Excluding GST
Non-Artwork Costs <ul style="list-style-type: none">• Art Curation• Conservator• Marketing & PR	\$50,000
Artwork Costs <ul style="list-style-type: none">• Design & Development• Materials & Installation	\$200,000
Maintenance Allowance & Contingency	\$50,000
Total Public Art Budget	\$300,000

6. Project production schedule

WE ARE HERE II (STILL)	2021			2022												2023	
Schedule	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb
Preliminary Public Art Plan																	
Review, refine and approve																	
Execute Public Art Plan																	
Develop EOI document																	
Engage marketing consultant																	
EOI approved by The Developer/City of Sydney																	
Stage 1: Announce artist EOI call out																	
Receive submissions																	
Review submissions																	
Stage 2: Present shortlist to The Developer																	
Stage 3: The Developer & Curator select artists for design development																	
Stage 4: Design & budget development																	
Work with artists to develop artwork design, maintenance plan, budgets																	
Stage 5: Final artist selection and commission																	
Artists selected by panel																	
Finalise & commission artists																	
Announce final artworks and renders																	
Stage 6: Install artworks																	
Finalise install plans																	
Install artworks																	
Submission of Public Art Report																	
Project completed																	

SCHEDULE 1

WE ARE HERE 2013

Theme descriptions featured in artwork

The Owners & custodians of the land

We honour the Gadigal elders past & present as the owners of the land surrounding you and under your feet. We imagine the land before colonisation with native animals and flora. Whilst the animals are beautiful the section as a whole is visually jarring alluding to the jarring event about to occur. Some of these native animals are a water dragon, a quoll, a cormorant, an egret, a frog, feather tail glider and a wattle bird, animals that lived in this area pre-colonization.

War & Peace

From Victory parades to anti-war protests, Oxford Street has been a witness to countless demonstrations and victory celebrations. With Victoria Barracks and the War Memorial nearby, Oxford Street has witnessed young soldiers marching off to war and marches commemorating the fallen. Anti-war protesters have gathered on Oxford Street protesting for peace both near and far from the Japanese invasion of China in the thirties to Vietnam and anti-nuclear demonstrations.

Fame & Shame

During the late 60s, 70's, 80's the area was a cheap place to live which encouraged a dynamic population of immigrants and students. The area grew into a culturally diverse music and arts hub. Pubs and clubs took advantage of the musical zeitgeist of the area and provided the space for bands to cut their teeth. Bands such as The Divinyls, Radio Birdman, and The Clouds were significant to the Australian scene whilst street performers and buskers were on every corner.

Freedom & Confinement

Darlinghurst Gaol was opened in 1841, and prisoners such as an inebriated Henry Lawson and Captain Moonlight were paraded up Oxford Street (then Old South Head Road) to meet their fate. Hangings were open to the public with people jeering from Forbes St. Louise Collins was the last woman to be hung in NSW who came to her fate in the grounds of Darlinghurst Gaol on the 8th of January 1889.

In 1922 Oxford Street saw a different sort of hanging on the same site with the transformation of the Gaol to the East Sydney Technical College (now the National Art School). Artists flocked to the new school and its alumni include Max Dupain, Charles Blackman, Jeffrey Smart, Margaret Olley Adam Cullen, Reg Mombassa and Wendy Sharp to name a few.

Commerce & Multiculturalism

In the late 19th century business was booming on the strip. Strange smells, mess, clutter and clatter were wafting down from Oxford Street to where you are now standing. The area was filled with businesses run by a different demographic to the rest of Sydney, there was Chinese, Jewish, Greek Italian, Russian, Spanish immigrants selling their wares from Swiss precision instruments to oyster bars, to Irish taverns.

Protest & Pride

The Sydney Mardi Gras grew from gay rights marches held annually from 1978. In these early days, many activists were arrested by police, outed by newspapers and considered criminals for dreaming of equality. Now the parade includes participants from the Police department and forces important issue such Same Sex Marriage rights into the public forum. Fred Nile, don't rain on our parade!

From Paddock to Plate

The Royal Easter show is the original celebration of buying local and understanding where our food comes from. The Show was held at Moore Park for 116 of its' 190-year history. The annual Easter Show Parade was a chance for the "City to meet Country" a parade for exhibitors to show off their livestock and produce to the urban dwellers. The parade went through Sydney streets along Oxford St to Moore Park.

Our transcendent tools of our trade

A recurring motif throughout the artwork is hands. The hardworking hands of the residents, artisans and business owners have created Darlinghurst. The hand also has the ability to transcend borders and verbal language through sign language which is peppered throughout the work – can you understand what it says?

One People One Destiny

Federation in 1901 saw celebrations all over the country. A huge parade made its way to Centennial Park along Oxford Street on the 1st of January 1901. Many Celebrations of nationhood have been referenced from sesquicentenary celebrations of 1938 to Centenary of Federation celebrations of 2001.

Poets and scoundrels

The Darlinghurst area has been immortalised by wordsmiths from Henry Lawson to Paul Kelly. At Lawson's death he was honoured with a state funeral and his casket traversed up Oxford Street on its way to Waverly Cemetery.

At times Darlinghurst was considered the epicentre of crime, corruption and the haven of the underworld. In the 20s and 30s the area was run by two women, Tilly Devine and Kate Leigh who headed up organized crime syndicates, ran brothels, sly-grog houses and 'snow parlours'.

Also Featured

Larry Foley, the namesake of Foley Street is considered Australia's father of boxing, he was a bare-knuckle fighter of the day.

The Plague hit Sydney in 1900 over 44,000 rats were officially killed in the cleansing operation.

SCHEDULE 2

Curator Statement – WE ARE HERE 2013

A parade where the street becomes a stage

WE ARE HERE is an inclusive proclamation of present and past. A spectacle inviting you in; you are here, and WE ARE HERE.

The WE ARE HERE mural transforms Foley Street into a time travelling, rambunctious romp through the complex history of the local area. Taking its cue from the hundreds of celebratory and solemn parades that have travelled up Oxford St, the work turns the façade into a topographical map to create the WE ARE HERE parade route.

Deeply connected to the location this parade is filled with a motley crew of heroes, villains, musicians, bohemians and gangsters. Imbued with the ghosts of those that have come before, the prancers and preeners, bakers, brewers and whores. This is a celebration of the folks that have made Darlington their home or the source of their bread and butter.

The work collaboratively executed by artists Sarah Howell, Dylan Demarchi, byrd, The Dirt & Gui Andrade brings to life lost fragments of the area's history and brings it firmly to the present. Using paint, collage, mixed media, photography and stencil, the mixed and contrasting mediums employed by the artists play with the inherent polarities of the Darlington & Oxford Street narrative.

The often dark and gruesome history is melded with times of celebration. The work rejoices in the swinging pendulum of its fortunes from cultural backwater to creative epicentre, from slum to designer living, a place of protest to a place of celebration, from the 6 o'clock swill to sophisticated cocktail culture, criminal to respectable, addict ridden to health driven. This is an area that has seen and been it all.

Whilst the work honours the past it is also firmly placing a stake in the ground for the present. Celebrating the renewed creativity that is re-emerging in and around Oxford St. The artists and the culture creators are here once again in and around Oxford St, building it with their hands (or the click of a mouse button) and proclaiming WE ARE HERE.

Curator

Juliet Rosser

SCHEDULE 3

Local Historian Clive Faro's history of Oxford Street for the WE ARE HERE 2013 program

A back lane in the city's back yard

Originally a bush track that ran along the ridge between Botany Bay and Sydney Harbour, by World War 1 Oxford Street had morphed into a boulevard that joined the city to the suburbs to its east.

The history of this street - how it came to be built, and the people who came to live on it - is in many ways emblematic of the history of the city. Early in the 19th century, Governor Macquarie, for largely strategic reasons, constructed a road to the South Head along that ridge. However, it soon became a place claimed by Sydney 'society': a place to parade, to see and be seen.

As the city grew, and the localities of Darlinghurst and Surry Hills were sub-divided, a web of smaller streets and even smaller back lanes spread out into what eventually became suburbs of the city. In the 1840s, a new courthouse and gaol brought significant public buildings to the area. Gradually the South Head Road was becoming a 'high street', a place of commerce and communities; its commercial success in turn led to a name change - it became 'Oxford Street'. With aspirations to elegant London shopping, a merchandising revolution saw the advent of new department stores, many located in lower Oxford Street.

Foley Lane edges along these lower reaches of Oxford Street and forms a kind of backstage to the mainstage of the boulevard on the ridge. It is in lanes like this that the life that supported the main street has played out: where the supplies arrived for shops fronting onto Oxford Street; where the kegs of beer were offloaded for the pubs; and where the detritus of daily life was taken away by garbage and night soil collectors. It is here that the corpses were discreetly offloaded by hearses to be installed in the funeral parlours facing Oxford Street; and it is in these lanes where the ladies of the night and their clients have danced the dance of desire.

Shadows of these previous lives live on in the present-day lanes of Darlinghurst. It is here that you'll see cats preening in the late afternoon sunshine, a drag queen fix her makeup before launching herself onto Oxford Street, or a group of clubbers gather for a chat and a 'breath of fresh air before heading back into the maelstrom of Oxford Street

A back lane in the city's back yard, Foley Lane has seen it all.

Clive Faro – Author, Street Seen: a history of Oxford Street