

Planning Agreement

The Council of the City of Sydney

and

Toga Development No 15 Pty Limited

ABN 27 000 035 861

and

Toga Project Services Pty Limited

ABN 56 000 965 515

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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**);
- (2) **Toga Development No 15 Pty Limited** ABN 27 000 035 861 of Level 5, 45 Jones Street, Ultimo NSW 2007 (the **Landowner**); and
- (3) **Toga Project Services Pty Limited** ABN 56 000 965 515 of Level 5, 45 Jones Street, Ultimo NSW 2007 (the **Developer**).

BACKGROUND

- (A) The Developer intends to undertake the Development on the Land.
- (B) The Landowner is the owner of the Current Toga Land.
- (C) On 10 June 2020, the Landowner entered into an option deed with Homabros International Pty Ltd in respect of the Future Toga Land pursuant to which Homabros International Pty Ltd agreed to sell, and the Landowner agreed to purchase, the Future Toga Land pursuant to the terms of the deed (**Option Deed**). As at the date of this document, the Landowner has paid the deposit under the Option Deed. On or before 4 December 2020, the Landowner will become 50% owner of the Future Toga Land and expects to complete the purchase of the Future Toga Land on or before 4 November 2021.
- (D) The Landowner and the Developer are seeking to defer the planning controls applicable to the Land under the *Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013*.
- (E) 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 Personal Information means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Developer).

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

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

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.

Conditions Precedent means the conditions precedent in clause 3.1.

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).

Current Toga Land means the land comprised in folio identifier 4/25272 being 324 Botany Road, Alexandria and folio identifier 4/1015619 being 6-12 O’Riordan Street, Alexandria.

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 in relation to the Developer’s Works, 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 4b 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.

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

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

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)*.

Future Toga Land means the land comprised folio identifier 3/1015619, being 320-322 Botany Road, Alexandria.

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.

Green Infrastructure means that part of the Public Benefit described as "Green Infrastructure" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

Gross Floor Area has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

GST means the same as in the GST Act.

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

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

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Best's);

- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the City.

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

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

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

Insolvency Event means:

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

- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

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

Instrument means the easement for right of carriageway and the positive covenant contemplated by Annexure C.

Land means the land described in Item 1 of Schedule 1 of this document, being the Current Toga Land and the Future Toga Land.

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

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

LEP means the *Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013 (as amended from time to time)*.

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

Occupation Certificate has the same meaning as in the Act.

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

Personnel means the Developer's or Landowner's (as applicable) officers, employees, agents, contractors or subcontractors.

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

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

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

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

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

Right of Carriageway and Breakthrough Works means the works contemplated by Annexure C.

Standards means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 6 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.

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

1.2 **Rules for interpreting this document**

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

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

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

2. APPLICATION OF THE ACT AND THE REGULATION

2.1 Application of this document

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

- (a) the Land; and
- (b) the undeferral of the planning controls on the Land being *Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013*.

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

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.

2.4 City rights

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

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

2.5 Explanatory note

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

3. OPERATION OF THIS PLANNING AGREEMENT

3.1 Conditions precedent

This document is conditional on:

- (a) this document being registered on the certificates of title for the Land;
- (b) the Landowner becoming the owner of the Land; and
- (c) the undeferral of the planning controls applicable to the Land under the LEP.

3.2 **Satisfaction of conditions precedent**

The Landowner must promptly notify the City once each Conditions Precedent has been satisfied.

3.3 **Non-satisfaction of conditions precedent**

If clause 3.1(a) and clause 3.1(b) are not satisfied on or before 5.00pm on 20 December 2021, either the City, the Landowner or the Developer may, before clause 3.1(a) and clause 3.1(b) are satisfied, give the other parties written notice to rescind this document.

3.4 **Commencement**

- (a) Subject to clause 3.4(b) this document will only commence once the Conditions Precedent are satisfied and until the Condition Precedents are satisfied, neither party has any obligations to the other under this document
- (b) In this document:
 - (i) the obligations in clause 3.2;
 - (ii) the warranties in clause 4;
 - (iii) the Landowner's and the Developer's obligations in clause 9.1;
 - (iv) the restrictions in clause 13.2(a);
 - (v) the restrictions in clause 13.3(a); and
 - (vi) the obligations in clause 15,

commence from the date of this document and the parties' obligations under these clauses apply from the date of 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 **Landowner Warranties**

- (a) The Landowner warrants to the City that, at the date of this document:
 - (i) it is the registered proprietor of the Current Toga 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; and
 - (iii) it is not aware of any matter which may materially affect the Landowner's ability to perform its obligations under this document.
- (b) The Landowner warrants to the City that, once the Conditions Precedent are satisfied:
 - (i) it is the registered proprietor of 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; and
 - (iii) it is not aware of any matter which may materially affect the Landowner's ability to perform its obligations under this document.

4.3 **Developer warranties**

- (a) The Developer warrants to the City that, at the date of this document:

- (i) 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;
 - (ii) 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
 - (iii) 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, when the Conditions Precedent are satisfied:
 - (i) 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;
 - (ii) 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
 - (iii) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (c) 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.

6. **COMPLETION**

6.1 **Date of Completion**

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

6.2 **Developer completion notice**

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

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion;
- (b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to assume responsibility for the Developer's Works; and
- (c) at least three sets of the "as built" drawings of the Developer's Works, including one set in electronic format,

(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 Item 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;
 - (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).
- (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) 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 Consent or this document then the City may either:
 - (i) complete the Public Benefits itself, including by exercising its right to compulsorily acquire the Transfer Land in accordance with clause 10.6 of this document; or
 - (ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document,

and may recover all 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. INDEMNITIES

- (a) The Landowner 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 Landowner (or any Personnel) as a direct result of the performance of the Landowner'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).
- (b) 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) as a direct result of 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 4.3 of this document; or
 - (ii) the City notifies the Developer of a Defect in the Developer's Works 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 Developer's Works.
- (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 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

9.1 Registration of this document

- (a) The Landowner:
 - (i) consents to the registration of this document at the NSW Land Registry Services on the certificates of title to the Land;
 - (ii) warrants that it has obtained all consents to the registration of this document on the certificates 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;

- (B) providing the production slip number when the Landowner produces the certificates of title to the Land at the NSW Land Registry Services; and
 - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
 - (iv) The Landowner 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.
- (b) The Developer:
- (i) consents to the registration of this document at the NSW Land Registry Services on the certificates of title to the Land;
 - (ii) warrants that it has obtained all consents to the registration of this document on the certificates 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;
 - (B) providing the production slip number when the Developer produces the certificates of title to the Land at the NSW Land Registry Services; and
 - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
 - (iv) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

9.2 **Release of this document**

If 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 certificates 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 City may issue a notice to the Developer requiring an adjustment to the Guarantee Amount. In such circumstances, 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 4.2 of Schedule 3 of this document (provision of detailed design drawings and detailed costs estimate);
 - (ii) the Developer fails to comply with clause 2 of Schedule 3 (payment of Monetary Contribution);
 - (iii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.4(a)(ii);

- (iv) an Insolvency Event occurs in respect of the Developer;
 - (v) the Developer fails to deliver the Public Benefits in accordance with clause 6.4(b);
 - (vi) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document;
 - (vii) the detailed designs for the Developer's Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;
 - (viii) the Developer's Works do not reach Completion within 36 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed by the City in writing); or
 - (ix) the City incurs any other expense or liability in exercising its rights and powers under this document.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.2 must be applied only towards:
- (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document; and
 - (ii) carrying out any works required to achieve the Public Benefits.

10.4 Expenditure by the City

If the City claims on the Guarantee to Complete the Developer's Works, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or
- (b) may expend more than the Guarantee Amount. If the City expends more 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 paragraph (b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.
- (b) If:
 - (i) the monies secured by the Guarantee have not been expended;

- (ii) the City has concurred with Completion in accordance with clause 6.3(a)(i) of this document, taking into account any approved non-completion of Public Benefits approved by clause 6.4(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.

10.6 **Compulsory acquisition**

- (a) If the Developer fails to transfer or dedicate the Transfer Land to the City in accordance with Schedule 3 of this document then the City may compulsorily acquire that land for the amount of \$1.00 in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (NSW). The City and the Developer agree that:
 - (i) this clause 10.6 is an agreement between the Developer and the City for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*;
 - (ii) in this clause 10.6 the Developer and the City have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and
 - (iii) the Developer must pay the City, promptly on demand, an amount equivalent to all costs incurred by the City in acquiring the whole or any part of the Transfer Land as contemplated by this clause 10.6.
- (b) If the Developer fails to grant and register the Instrument as part of the Developer's Works in accordance with Schedule 3 and Annexure C of this document then, without limiting any other remedies available to it, the City may compulsorily acquire the Instrument on the terms and in the location set out in Annexure C for the amount of \$1.00 in accordance with the Land Acquisition (Just Terms Compensation) Act 1991 (NSW). The City and the Developer agree that:
 - (i) this clause 10.6 is an agreement between the Developer and the City for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*;
 - (ii) in this clause 10.6 the Developer and the City have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and

- (iii) the Developer must pay the City, promptly on demand, an amount equivalent to all costs incurred by the City in acquiring the whole or any part of the Instrument as contemplated by this clause 10.6.

11. **DISPUTE RESOLUTION**

11.1 **Application**

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

11.2 **Negotiation**

- (a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative, the Landowner'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, the Landowner's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.
- (c) The Developer's Representative, the Landowner's Representative and the City's Representative may meet more than once to resolve a Dispute. The Developer's Representative, the Landowner'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. None of the parties 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 Landowner and the Developer if the Dealing is with a Government Agency. The City must give the Landowner and 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 Landowner and the Developer, such consent not to be unreasonably withheld or delayed.

13.2 **Dealing by the Landowner**

- (a) Prior to registration of this document in accordance with clause 9 and the satisfaction of clause 3.1(a) and clause 3.1(b), the Landowner must not Deal with this document or the Land or any part of the Land without:
 - (i) the prior written consent of the City; and
 - (ii) the City, the Landowner, 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 and satisfaction of clause 3.1(a) and clause 3.1(b):
 - (i) the Landowner may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the whole of the Land;
 - (ii) the Landowner 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; and
 - (iii) the Landowner must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
 - (A) the prior written consent of the City; and
 - (B) the City, the Landowner, 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.
- (c) The Landowner must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.

13.3 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 9 and the satisfaction of clause 3.1(a) and clause 3.1(b), the Developer must not Deal with this document or the Land or any part of 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 and satisfaction of clause 3.1(a) and clause 3.1(b):
 - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the whole of the Land;
 - (ii) 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; and
 - (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
 - (A) the prior written consent of 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.
- (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 13.3.

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

- (a) Prior to the dedication or transfer of the Transfer Land to the City, the Developer must:
 - (i) extinguish all leases and licences over the Transfer Land; and
 - (ii) use its best endeavours to extinguish all redundant encumbrances and those that, in the City's opinion, would unreasonably impede the intended use of all or any part of the Transfer Land.
- (b) The Developer must comply with any directions by the City relating to the Transfer Land, including but not limited to the creation of any encumbrances over the Transfer Land.

14. **TERMINATION**

- (a) The City may terminate this document by notice in writing if the LEP is:
 - (i) amended by an environmental planning instrument in a way that prevents the Development from proceeding; or
 - (ii) declared to be invalid by a Court of competent jurisdiction
- (b) The City may terminate this document if following the City's request to the Department of Planning, Industry and Environment (**the Department**) to undefer the planning controls in the LEP applicable to the Land, the Department refuses or fails to undefer the planning controls in the LEP applicable to the Land being the *Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013*.
- (c) If the this document is terminated under this clause 14, 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 and the City must take all steps reasonably necessary to minimise any loss the each party may suffer as a result of the termination of this document by it;
 - (iii) the City will return the Guarantee to the Developer after first deducting any amounts owing to the City or costs incurred by the City by operation of this document. If in exercising its rights under this document the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer; and

- (iv) the City will, at the Developer's cost, do all things reasonably required to remove this document from the certificates of title to the Land.

15. **CONFIDENTIALITY AND DISCLOSURES**

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.

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 Schedule 1 for the City's Representative, the Landowner's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

17. GENERAL

17.1 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.

17.2 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.

17.3 Liability for expenses

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

17.4 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.

17.5 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.

17.6 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.

17.7 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.

17.8 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.

17.9 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.

17.10 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.

17.11 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.

17.12 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.

17.13 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.

17.14 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.

17.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Folio identifier 4/1015619 being 6-12 O’Riordan Street, Alexandria (Site 2), folio identifier 3/1015619 being 320-322 Botany Road, Alexandria (Site 3) and folio identifier 4/25272 being 324 Botany Road, Alexandria (Site 4).
2.	Development	<p>Commercial building development up to maximum height of RL63.4m for Sites 3 and 4, and RL75m for Site 2. The Development will include land dedication and public domain works to the future Transport Place and footway widening to Botany Road and O’Riordan Street frontages.</p> <p>The maximum Gross Floor Area of the Development on the Land is 27,109 square metres, unless in the opinion of the consent authority the proposed development exhibits design excellence under clause 6.9 of the LEP in which case the maximum Gross Floor Area of the Development on the Land is 28,234 square metres.</p>
3.	City’s Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email: gjahn@cityofsydney.nsw.gov.au</p>
4a.	Landowner’s Representative	<p>Name: Executive General Manager, Development, Development and Construction</p> <p>Address: Level 5, 45 Jones Street, Ultimo NSW 2007</p> <p>Email: pshaw@toga.com.au</p>
4b.	Developer’s Representative	<p>Name: Executive General Manager, Development, Development and Construction</p> <p>Address: Level 5, 45 Jones Street, Ultimo NSW 2007</p> <p>Email: pshaw@toga.com.au</p>
5.	Development Application	Not applicable

6.	Guarantee Amount	An amount equal to the Attributed Value of the Developer's Works.
7.	Guarantee Amount Due Date	Prior to the date the first Construction Certificate for the Development is issued.

SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

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

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

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.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 11
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 10
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 9
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Payment of the Monetary Contribution and provision of the 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)	Embellishment of the Transfer Land and Completion of the Developer's Works.
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Embellishment of the Transfer Land and Completion of the Developer's Works. Dedication/transfer of the Transfer Land. Completion of the Green Infrastructure. Completion of the Right of Carriageway and Breakthrough Works Granting and registration of the Instrument.
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.	Monetary Contribution	\$4,440,000	Prior to the issue of the first Construction Certificate for the Development	Not applicable
2.(a)	Transfer Land - Botany Road Footpath	\$Nil	After Completion but before the issue of the first Occupation Certificate for the Development.	An area of approximately 24.0 square metres, being a stratum of not less than 1.4m wide for a footway widening to Botany Road limited in depth to 1.5m below ground and height to the first floor of the Development. Plans showing the indicative location of the Transfer Land – Botany Road Footpath are contained in Annexure A to this document.
2.(b)	Transfer Land - O’Riordan Street Footpath	\$Nil	After Completion but before the issue of the first Occupation Certificate for the Development.	An area of approximately 126.5 square metres, being a stratum of not less than 2.4m wide for a footway widening to O’Riordan Street limited in depth to 1.5m below ground and height to the first floor of the Development. Plans showing the indicative location of the Transfer Land –

				O'Riordan Street Footpath are contained in Annexure A to this document.
2.(c)	Transfer Land – Future Transport Place	\$Nil	After Completion but before the issue of the first Occupation Certificate for the Development.	An area of not less than 583.6 square metres, for the future Transport Lane. Plans showing the indicative location of the Transfer Land – Future Transport Place are contained in Annexure A to this document.
3.	Developer's Works	An amount which is equal to the Attributed Value of the Developer's Works as determined pursuant to clause 4.3 of Schedule 3.	Prior to the issue of the first Occupation Certificate for the Development.	The works include: (a) footway widening in the area comprising the Transfer Land – Botany Road Footpath in 2.(a) above; (b) footway widening in the area comprising the Transfer Land – O'Riordan Street in 2.(b) above; and (c) construction of a temporary paving treatment in the area comprising the Transfer Land – Future Transport Place in 2.(c) above. Plans and specifications showing the nature and extent of the required Developer's Works above will be developed further between the parties, however, all works must be consistent with the City of Sydney's Street Code.
4.	Green Infrastructure	\$Nil	Refer to "Due date" column in Annexure B.	In accordance with the City's requirements (see Annexure B).

5.	Breakthrough Works	\$Nil	Prior to the issue of the first Occupation Certificate for the Development.	The works relating to the breakthrough panel and future tunnel connection under the stormwater culvert as described in Annexure C.
6.	Granting and registering the Instrument	\$Nil	Prior to the issue of the first Occupation Certificate for the Development.	Granting and registering the Instrument described in Annexure C.

2. PAYMENT OF MONETARY CONTRIBUTION

2.1 Payment

Subject to clauses 2.2 and 2.3, the Developer must pay the Monetary Contribution to the City prior to the issue of the first Construction Certificate under the Development Consent for the Development in cash or by unendorsed bank cheque.

2.2 Indexation

At the date of payment of the Monetary Contribution, the Monetary Contribution must be indexed as follows:

Monetary Contribution (to be provided) =

Monetary Contribution (as per item 1 of clause 1 above) x
(A/B)

where:

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

B is the Index Number most published for December 2005, being 84.3.

If after the formula is applied the Monetary Contribution will be less than the amount stated in item 1 of clause 1 above, the Monetary Contribution will not be adjusted.

2.3 Deduction

At the date of payment of the Monetary Contribution, the Monetary Contribution must be adjusted as follows:

Monetary Contribution (to be provided) =

Monetary Contribution (as per item 1 of clause 1 above as indexed pursuant to clause 2.2) less the Attributed Value of the Developer's Works

2.4 **No trust**

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

3. **TRANSFER LAND**

3.1 **Dedication of land – decision**

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

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

3.2 **Obligations on dedication**

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

3.3 **Obligations on transfer**

- (a) The requirement for the Landowner to transfer the Transfer Land to the City is satisfied where:
 - (i) the City is given:
 - (A) an instrument in registrable form under the *Real Property Act 1900* (NSW) duly executed by the Developer as transferor that is effective to transfer the title to the Transfer Land to the City when executed by the City as transferee and registered;
 - (B) the written consent to the registration of the transfer of any person whose consent is required to that registration; and
 - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- (b) The Landowner is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.

The Developer and the Landowner must ensure that the Transfer Land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for

rates, taxes and charges) except for any encumbrances agreed in writing by the City in its absolute discretion.

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

4. FINAL DESIGN OF THE DEVELOPER'S WORKS

4.1 Scope of Developer's Works

- (a) As at the date of this document, the nature and extent of the required Developer's Works is set out in Annexure A to this document. The parties agree that further design refinement of the Developer's Works may be necessary, having regard to:
 - (i) the extent to which the design of the Developer's Works has been approved by the City;
 - (ii) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document;
 - (iii) the extent of any refinement of the design of the Developer's Works permitted by this clause 3.3(d) of Schedule 3;
 - (iv) any modification to the Development Consent made and approved under section 4.55 of the Act or any other development consent granted that relates to the Developer's Works; and
 - (v) the reasonable requirements of the City, including in regard to the Standards.

4.2 Final design of Developer's Works

- (a) Promptly following the issue of the Development Consent, the Developer must submit to the City's Representative for approval detailed design drawings of the Developer's Works that reflect the plans and specifications as developed between the parties.
- (b) Within 30 Business Days after the City's Representative has received the detailed design drawings, the City must inform the Developer in writing as to whether the detailed design drawings are approved or not approved.

- (c) If the City provides notice under clause 4.2(b) of Schedule 3 that the detailed design drawings are not approved, the City must under that notice inform the Developer in writing as to what further information or modifications to the detailed design drawings are required. The Developer will have a further 20 Business Days after receipt of the written notice outlining the further information or modifications to the detailed design drawings to re-submit said further information or modifications. Following re-submission by the Developer under this clause 4.2(c) of Schedule 3 the process outlined in clauses 4.2(b) to (c) of Schedule 3 will apply again.
- (d) If the Developer:
 - (i) fails to prepare the detailed design drawings; or
 - (ii) does not provide further information or modify the detailed design drawings,

in accordance with this clause 4.2 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.

4.3 **Attributed Value of Developer's Works**

- (a) The parties acknowledge and agree that at the date of this document:
 - (i) the final design of the Developer's Works has not been determined; and
 - (ii) the Attributed Value for the Developer's Works has not been determined.
- (b) The Developer must engage an independent quantity surveyor to assess the value of the Developer's Works following completion of the process set out in clause 4.2 of Schedule 3, having regard to the final design and use of the Developer's Works approved by the City and provide that assessment to the City (**QS Assessment**).
- (c) Within 30 Business Days after the City's Representative has received the QS Assessment, the City must inform the Developer in writing as to whether the QS Assessment is approved or not approved. If the City provides notice that the QS is not approved, the City at the same time must inform the Developer of the City's assessment of the value of the Developer's Works (**City Assessment**). The Developer will have a further 20 Business Days after receipt of the City Assessment to re-submit the independent quantity surveyor's assessment of the value of the Developer's Works. Following re-submission by the Developer under this clause 4.3(c) the process outlined in clauses 4.3(b) to (c) of Schedule 3 will apply again.
- (d) The value of the Developer's Works approved by the City will be the Attributed Value of the Developer's Works for the purpose of this document.

4.4 **Preparation of and changes to construction design drawings**

- (a) Following approval of the detailed design drawings by the City in accordance with clause 4.2 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 4.2 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 4.4(b)(iii) of Schedule 3 does not significantly increase:
 - (A) the cost of that element of the Developer's Works; or
 - (B) the complexity of implementation of the Developer's Works that may lead to a delay in the completion of the Developer's Works of 4 weeks or more.
- (c) Within 20 Business Days of receiving a notice from the City under clause 4.4(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 4.4(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 3.3(d) 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.

5. CONSTRUCTION OF DEVELOPER'S WORKS

5.1 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.

5.2 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 Consent.

5.3 Construction work

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works, including any approval given by the City under this document;
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use;

- (c) ensure that the Developer's Works reach Completion 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 Item 1 of Schedule 3; and
- (d) comply with all reasonable directions of the City in respect to construction of the Developer's Works.

5.4 **Inspections by the City**

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

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

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

6. **STANDARDS**

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

Relevant Australian Standards – Verge Works, Through site links

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 1743 Road signs
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting

- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1428 Design for Access and Mobility
- AS 4454 Composts, soil conditioners and mulches

Relevant Australian Standards – Roads (including pedestrian areas)

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1742 Manual of uniform traffic control devices
- AS 1743 Road Signs

City Standards (All Works)

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

EXECUTED as a deed.

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

Signature of officer

Signature of witness

Name of officer
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 **TOGA DEVELOPMENT
NO 15 PTY LIMITED** (ABN 27 000
035 861) in accordance with s127(1)
of the Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **TOGA PROJECT SERVICES PTY LIMITED** (ABN 56 000 965 515) in accordance with s127(1) of the Corporations Act 2001 (Cth):

Signature of director

Name

Signature of director/secretary

Name

ANNEXURE A

Transfer Land and Developer's Works – additional plans and specifications

Transfer Land

- (a) All Transfer Land is to be remediated to a minimum depth of 1.5m from the finished footpath level and below the depth of any service asset to be placed under the road reservation in accordance with an approved Remedial Action Plan.
- (b) The proposed relocation of the stormwater culvert as shown on the plan is indicative. The final location of the culvert and associated easement is to be determined by agreement of the Developer, the City and Sydney Water and is not to impede the use of the future Transport Place.

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 of the Transfer Land to be fit for purpose in accordance with an approved Remedial Action Plan.
- (b) Construction of new public infrastructure being:
 - (i) Botany Rd and O'Riordan St Footway Widening
 - (ii) Future Transport Place
- (c) Construction of the civil and landscape works required to deliver the above, as approved by the City under clause 4.2(b) of Schedule 3, which may include but is not limited to footway pavement, kerb, gutter, stormwater drainage and pits, pedestrian lighting, tree planting and surrounds, garden planting, turf, and street furniture.
- (d) Provision and adjustment of utility services such as water, electricity, gas, NBN and sewer within the new road reserves.
- (e) Provision of temporary structures including batters, retaining walls and fences to boundaries of the Developer's Works as required.

TRANSFER LAND AREAS



O'Riordan St footway widening (minimum 2.4m wide, approx 126.5m2)



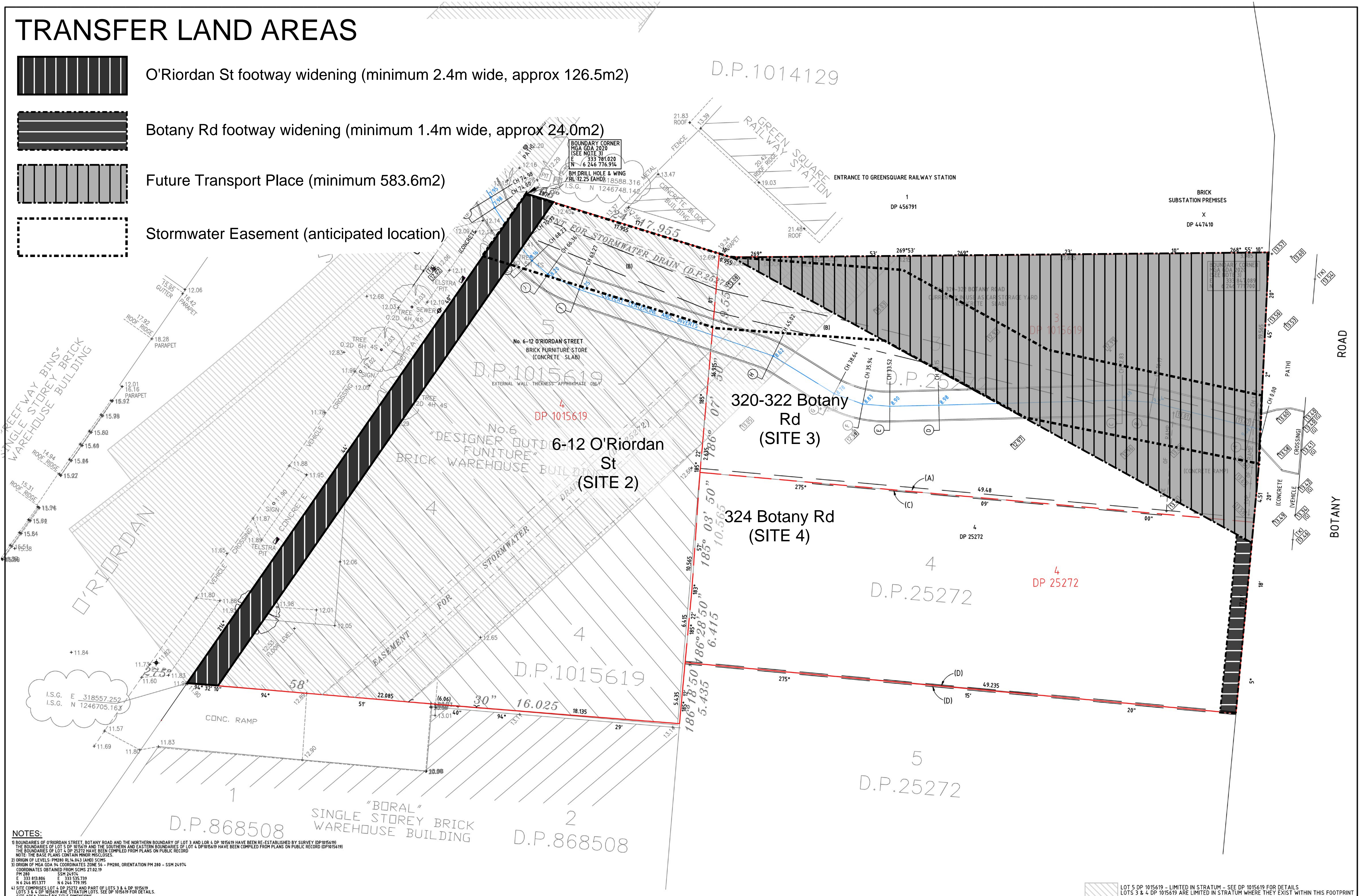
Botany Rd footway widening (minimum 1.4m wide, approx 24.0m2)



Future Transport Place (minimum 583.6m2)



Stormwater Easement (anticipated location)



NOTES:
1) BOUNDARIES OF O'RIORDAN STREET, BOTANY ROAD AND THE NORTHERN BOUNDARY OF LOT 3 AND LOT 4 DP 1015619 HAVE BEEN RE-ESTABLISHED BY SURVEY (DP 1015619).
2) THE BOUNDARIES OF LOT 5 DP 1015619 AND THE SOUTHERN AND EASTERN BOUNDARIES OF LOT 4 DP 1015619 HAVE BEEN COMPILED FROM PLANS ON PUBLIC RECORD (DP 1015619).
3) THE BASE PLANS CONTAIN MINOR MISCLOSES.
4) ORIGIN OF LEVELS: PM280 RL14.043 (AHD) SCMS
5) ORIGIN OF MGA GDA 94 COORDINATES ZONE 56 - PM280, ORIENTATION PM 280 - SSM 24974
6) COORDINATES OBTAINED FROM SCMS 27.02.19
7) SSM 24974
8) E 333 813.886
9) N 6 246 851.377
10) SITE COMPREHENSIVE LOT 4 DP 25272 AND PART OF LOTS 3 & 4 DP 1015619
11) LOTS 3 & 4 DP 1015619 ARE STRATUM LOTS. SEE DP 1015619 FOR DETAILS.
12) SITE AREA 328m² BY TITLE DIMENSIONS
13) WITH THE EXCEPTION OF THE STORMWATER CULVERT THAT IS THE SUBJECT OF THIS SURVEY, UNDERGROUND SERVICES HAVE NOT BEEN INVESTIGATED.
14) THE WALL, FLOOR AND ROOF THICKNESS OF THE CULVERT HAVE NOT BEEN SURVEYED AND ARE INDICATIVE ONLY.
15) SURFACE FEATURES, STRUCTURES AND DETAIL WITHIN THE SUBJECT PROPERTIES, ADJOINING PROPERTIES, FOOTPATHS AND ROADS HAVE NOT BEEN LOCATED AS PART OF THIS SURVEY.
16) THE LOCATION AND DIMENSIONS OF THE EASEMENT FOR STORMWATER DRAIN (DP 25272) ARE NOT DEFINED IN DP 25272 AND HAVE BEEN PLOTTED INDICATIVELY ONLY.
17) (A) DENOTES EASEMENT FOR OVERHANGING WALL AND EAVES & GUTTERING 0.355 WIDE (G65657 SHOWN ON DP25272)
18) (B) DENOTES EASEMENT FOR STORMWATER DRAIN (DP25272)
19) (C) DENOTES EASEMENT FOR SUPPORT 0.1 WIDE (G65657 SHOWN ON DP25272)
20) (D) DENOTES CROSS EASEMENTS AFFECTING THE PARTY WALL ON THE COMMON BOUNDARY OF LOTS 4 AND 5 DP 25272 (G61867 SHOWN ON DP25272)
21) CULVERT LOCATION, LEVELS AND SECTION INFORMATION OBTAINED FROM PLANS/FILES PROVIDED BY PROJECT SURVEYORS 12.01.19
22) JOB REF: 804478 - DRAWING NO. 804478-CULVERT-1 - "PLAN OF STORMWATER CULVERT BETWEEN BOTANY ROAD AND O'RIORDAN STREET"
23) CAD FILE 804478-CULVERT.DWG
24) (T) DENOTES EXISTING GROUND SURFACE LEVEL, (TK) DENOTES TOP OF KERB LEVEL
25) SURVEY INFORMATION SHOWN FOR No. 6 O'RIORDAN STREET AND SURROUNDS UNDERLINED IN GREY OBTAINED FROM DWG FILE AS RECEIVED
26) PLAN BY RYGATE & COMPANY PTY. LIMITED - "PLAN SHOWING DETAIL AND LEVELS LOTS 4 & 5 D.P. 1015619, No. 6 O'RIORDAN STREET"
27) REFERENCE No. 71324 - DATE 9/3/2005 - REV A DATE 13/5/2008 - CAD REFERENCE 71324.DGN

ISSUE	DATE	AMENDMENT	TITLE: PLAN SHOWING COMBINED SURVEY INFORMATION FROM PLANS BY NORTON SURVEY PARTNERS AND RYGATE & COMPANY AT No. 320-322 BOTANY ROAD & 6-12 O'RIORDAN STREET, ALEXANDRIA			
A	19.09.20	COORDINATES ON MGA GDA2020	LGA: SYDNEY	REFERENCE: 37906		
			CLIENT : TOGA	DATE: 27.08.19	SHEET 3	
			SCALE (AT A1) 1:150	DATUM : AHD	SURVEYOR: RW	GDA2020

Norton Survey Partners
SURVEYORS & LAND TITLE CONSULTANTS

A.B.N. 22 618 980 475
SUITE 1
670 DARLING STREET
ROZELLE N.S.W. 2039

PH +61 2 9555 2744
office@nspartners.com.au

ANNEXURE B

Green Infrastructure

The Developer must provide the Green Infrastructures in accordance with Schedule 3, this Annexure B and this document.

Green Infrastructure Public Benefit		Due Date
1.	Non-potable Recycled Water System	
1. (a)	<p>The Developer must design and construct all buildings on the Land so as to be capable of providing a dual reticulation water system for water consumption. The system must be capable of fully connecting to the Non-potable Recycled Water Network provided by the Council in Green Square and must be configured to supply all toilets, washing machine taps, car wash bays, cooling towers and irrigation usage on the Land. It is to be noted that car wash bays are to be dedicated to car washing and not shared with any other purpose such as visitor parking.</p> <p>As part of these requirements, the Developer must connect to the Non-potable Recycled Water Network installed by Council or, in the event that Council's Non-potable Recycled Water Network system is not operational at that time, connect the non-potable water pipes in the building to the utility mains potable water supply pipes downstream of the Sydney Water mains supply water meter (Non Potable Water Connection Point) and allow Council to disconnect the potable water supply from the non-potable water system and connect the recycled water network as soon as it becomes operational.</p>	Prior to the issue of each relevant Occupation Certificate which relates to any part of Habitable Space on each of the Sites.
1.(b)	Provide space of 1m x 1m x 2.4m (or as otherwise agreed by Council) and access for metering equipment, isolation valves and incoming pipes for recycled water at the Non Potable Water Connection Point at a location to be agreed between the parties.	Prior to the issue of each relevant Occupation Certificate which relates to any part of Habitable Space on each of the Sites.
1.(c)	Provide space and access from the property boundary to the Non Potable Water Connection Point	Prior to the issue of each relevant Occupation Certificate which relates to

	for installation of recycled water pipes of 1 metre in width.	any part of Habitable Space on each of the Sites.
1.(d)	Non-potable recycled water supply static pressure will be a minimum of 15 m head at the property boundary; and the Developer must design a reticulation system, including buffer storage of at least 35,000 litres or more storage as necessary, to adequately supply all the non potable water end uses, specified in (a) above at all times.	Prior to the issue of each relevant Occupation Certificate which relates to any part of Habitable Space on each of the Sites.
1.(e)	Non-potable recycled water supply quality will comply with the relevant National and State guidelines for water recycling (including but not limited to Australian Guidelines for Water Recycling) regarding supply to toilets, washing machine taps, car wash bays, cooling towers and irrigation usage and have a Total Dissolved Solids consistent within the Australian Drinking Water Guidelines.	Prior to the issue of each relevant Occupation Certificate which relates to any part of Habitable Space on each of the Sites.
2.1	5.5 Star Base Building NABERS Energy Commitment Agreement	
2.1(a)	<p>New developments containing office premises with a net lettable area of 1,000sqm or more must demonstrate a high standard of energy efficiency has been considered through the design of the buildings. The measure of overall energy efficiency will be verifiable through a Base Buildings NABERS Energy Commitment Agreement of 5.5 stars.</p> <p>Documentation confirming that the building will be capable of supporting a Base Building National Australian Built Environment Rating System (NABERS) Energy Commitment Agreement of 5.5 stars through the NSW Office of Environment and Heritage must be submitted. Such an agreement is to be entered into prior to any construction certificate being issued under the Development Consent for the approved Development.</p>	Prior to the issue of each relevant Occupation Certificate which relates to any part of Habitable Space on each of the Sites.
2.2(a)	Renewable energy and energy savings measures	

2.2(a)	<p>A lot owner must at a minimum:</p> <ul style="list-style-type: none"> - install (a) photovoltaic system(s) (PV's) with a generation capacity of at least 50kWp on roof space with sufficient solar exposure to ensure optimal renewable energy generation from the system available rooftop space - use solar thermal and/or heat pumps for domestic hot water generation - implement multiple detection systems including Occupant Detection and Daylight Dimming to automate lights as well as to ensure efficient operation of ventilation, heating and cooling system - implement a Chilled Beam HVAC system for better efficiency - design façade performance to demonstrably exceed NCC 2019 requirements by provision of Section J as evidenced by a Section J Report by a suitably qualified professional <p>In the event these cannot be delivered, the lot owner must demonstrate alternative pathways to meeting the base building 5.5 Star NABERS Commitment Agreement.</p>	<p>Prior to the issue of each relevant Occupation Certificate which relates to any part of Habitable Space on each of the Sites.</p>
2.3	6 Star NABERS Energy Rating with Green Power on Operation	
2.3(a).	<p>The Development must achieve a 6 Star NABERS Energy Rating with Green Power in Operational mode.</p> <p>The lot owner may enter into a Green Power Purchase Agreement to augment the 5.5 Base Building NABERS Energy rating in order achieve the 6 Star NABERS Rating. Such a Power Purchase Agreement must be entered into for a minimum of 10 years from the date of the issue of the first Occupation Certificate for the Development.</p>	<p>18 months after issue of the final Occupation Certificate for the Development or 12 months after the Development reaches a 75% tenancy load, whichever is the later.</p>
2.3(b)	<p>The lot owner will engage a building energy analytics firm prior to the issue of the first Occupation Certificate for the Development to analyse the building's long term energy usage and identify opportunities to fine tune building energy performance during the following periods:</p>	<p>Each report will be due promptly following the relevant anniversary of the first Occupation Certificate to which the report applies.</p>

	<ul style="list-style-type: none"> - The issue of the first Occupation Certificate to the first anniversary of that date - The first anniversary of the first Occupation Certificate to the second anniversary of the first Occupation Certificate - The second anniversary of the first Occupation Certificate to the third anniversary of the first Occupation Certificate 	
3.	Commitment to 5 Star Green Star (Design & As Built) Rating	
3.(a)	As part of recognising the City of Sydney guidance on voluntary standards for excellence in environmental performance in commercial office buildings, the Developer must consider options to achieve credit points which will enable the building to achieve a minimum 5 Star rating under the Green Star Design & As Built rating tool scheme, as defined by the Green Building Council of Australia's (GBCA) Rating Tool applicable to the Development at the date of this document.	Prior to the issue of a relevant Construction Certificate, the Developer shall submit details to the City demonstrating compliance with this requirement.
3.(b)	Certification is to be provided from the GBCA to the City confirming that the Development achieves a 5 Star rating under the 'As-Built' component of the version of the Green Star Design & As-Built Tool applicable at the time of registration of the project with GBCA.	Within 24 months of the issue of the final Occupation Certificate for the Development.
4.	Air conditioning refrigerant	
4.	<p>A lot owner must, where an air conditioning package or other system requiring a refrigerant for space heating and/or cooling is to be provided:</p> <ul style="list-style-type: none"> (i) ensure that the refrigerant used in the system has a Global Warming (GWP) of 3 or less to ensure maximum greenhouse gas equivalent abatement if such system is available from at least three established suppliers on similar terms to conventional systems and at market rates which are not more than 10% higher than the market rates for conventional systems; and (ii) if the system referred to in (a)(i) above is not available, then the lot owner must use its reasonable endeavours to use a system with 	Prior to the issue of an Occupation Certificate for any building on the Land for the Development.

	<p>a refrigerant which has the lowest commercially available GWP.</p> <p>For the purpose of clarity, the Developer is required to comply with the requirements of (a)(i) and (ii) above for the installation of any air conditioning package or other system requiring a refrigerant for space heating and/or cooling in the Development.</p>	
5.	Inverter air conditioning	
5.	A lot owner must, where an air conditioning package requires an inverter, use inverter air conditioning units that have a Coefficient of Performance (CoP) of 3.5 or more for space cooling and a CoP of 4.0 or more for space heating.	Prior to the issue of an Occupation Certificate which relates to any part of Habitable Space on each of the Sites.
6.	Covenant	
6.	The Developer must register on the title of the Land a covenant to fulfil the obligations identified in paragraphs 2.2(a), 4 and 5 or if such obligations cannot reasonably be met, such other equivalent or higher measures as the Council acting reasonably agrees. The covenant is to identify the Council as the authority benefited and the only party entitled to release, modify or vary the covenant.	Prior to the issue of an Occupation Certificate for any building on the Land for the Development.

ANNEXURE C

Right of Carriageway and Breakthrough Works and Instrument

Right of Carriageway and Breakthrough Works

The Developer must construct the right of carriageway and breakthrough works as shown as (A) in the plan at Annexure C in the same manner and to the same standard as the Developer's Works, so as to enable below ground vehicular access suitable for a Small Rigid Vehicle (3.0m high and 6.4m long) to be provided from O'Riordan Street over the Land to the land comprised in Lot 1 DP456791, Lot 1 DP575225 and Lot D DP81525 in the location generally specified as (A) in the plan at Annexure C and on the terms contained in this Annexure C.

Instrument

The Developer must grant and register the Instrument in the location generally specified as (A) in the plan at Annexure C and on the terms contained below in this Annexure C.

1. TERMS OF EASEMENT FOR RIGHT OF CARRIAGEWAY

Instrument setting out terms of Easements or Profits à Prendre intended to be created or released and of Restrictions on the Use of Land or Positive Covenants intended to be created pursuant to Section 88B Conveyancing Act 1919.

Lengths are in metres

(Sheet **[insert]** of **[insert]** sheets)

Plan:

**Plan of Easement for right of
carriageway and Positive Covenant
covered by Plan No. **[insert]****

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

**Toga Development No 15 Pty Limited
ABN 27 000 035 861
Level 5
45 Jones Street
Ultimo NSW 2007**

**Roads and Maritime Services
ABN 76 236 371 088
[Address TBC]**

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, right of carriageway or restriction to be created and referred to in the plan.	Burdened (lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1.	Right of carriageway marked as [insert] on the Plan limited in height and depth as shown on the Plan	Lot 4 DP1015619 Lot 3 DP1015619 Lot 4 DP25272	Lot 1 DP456791 Lot 1 DP575225 Lot D DP81525

Part 2 (Terms)

1 Interpretation

1.1 Definitions

In this Instrument:

Authorised User means every person authorised by the Owner of the Lot Benefited for the purposes of the Easement created by this Instrument, including employees, agents, servants, contractors, workmen, tenants and invitees of the Owner of the Lot Benefited.

Authority means any local, state or federal government statutory or public authority or corporation having jurisdiction over the Lot Benefited or the Lot Burdened and includes any consent authority.

Breakthrough means the fixed opening at the northern boundary of the Easement Site where it meets the boundary of the Lot Benefited.

Breakthrough Panels means the removable panels erected at basement level at the northern boundary of the Easement Site forming a temporary barrier between the Site and the Lot Benefited.

Council means The Council of the City of Sydney and its successors.

Development Consent means any development consent or other planning approval over all or part of the Lot Benefited that is relied upon to authorise the use of the Lot Benefited.

Easement means the easement in this Instrument and includes the conditions in relation to that easement.

Easement Management Plan means a plan prepared by the Owner of the Lot Burdened and approved by the Council which addresses the following issues:

- (a) design and operational details of the car park (including a traffic control system where reasonably required) for the use of the Easement Site including:
 - (i) use and replacement of security access cards or equivalent to the owners and occupiers of the Lot Benefited;
 - (ii) access arrangements for emergency and other service vehicles using the Easement Site to access the Lot Benefited;
 - (iii) signals for traffic flow if reasonably required;
 - (iv) 24-hour emergency contact details; and
 - (v) other security measures as may be reasonably necessary;
- (b) details of signage to be installed in the Easement Site to direct vehicles to the various areas serviced by the Easement;
- (c) the proposed method of managing possible traffic conflicts within the Easement Site; and
- (d) the proposed method of formulating and adopting rules for the use of the Easement by owners and occupiers of both the Lot Benefited and the Lot Burdened and any other Authorised Users.

Easement Site means, in relation to the Easement in this Instrument:

- (a) the site of the Easement on the Plan, including any limitations by height or depth; and
- (b) all items within the site of the Easement identified on the Plan which are the subject of the Easement.

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

Instrument means this instrument under section 88B of the *Conveyancing Act 1919* (NSW).

Liability means actions, claims, demands, damages, losses, costs, expenses and other liabilities (whether in contract, tort (including negligence) or otherwise).

Lot Benefited means the land referred to in Part 1 of this Instrument as being the land benefited by the Easement, or any part of it.

Lot Burdened means the land referred to in Part 1 of this Instrument as being the land burdened by the Easement, or any part of it.

Owner of the Lot Benefited means every person who is at any time entitled to an estate or interest in the Lot Benefited, including any freehold, strata, stratum

or leasehold estate or interest in possession in the Lot Benefited and each part of the Lot Benefited.

Owner of the Lot Burdened means every person who is at any time entitled to an estate or interest in the Lot Burdened, including any freehold or leasehold estate or interest in possession in the Lot Burdened and each part of the Lot Burdened.

Plan means DP[**insert**], being a plan of subdivision or consolidation of the Site.

Site means the land comprised in folio identifier 4/1015619 being 6-12 O’Riordan Street, Alexandria (Site 2), folio identifier 3/1015619 being 320-322 Botany Road, Alexandria (Site 3) and folio identifier 4/25272 being 324 Botany Road, Alexandria (Site 4).

1.2 **Interpretation**

- (a) The singular includes the plural and the plural includes the singular.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) "clause", "paragraph", "schedule" or "sub-clause" means a clause, paragraph, schedule or sub-clause respectively of this Instrument.
- (e) Unless stated otherwise, one provision does not limit the effect of another provision.
- (f) A reference to any law or to any provision of any law includes any modification or re-enactment of it, any legislative provisions substituted for it and all regulations and statutory instruments issued under it or them.
- (g) A reference to conduct includes any omission, statement or undertaking, whether or not in writing.
- (h) Headings in this Instrument are for information purposes only and do not affect the interpretation of this Instrument.
- (i) A reference to 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.
- (j) An agreement on the part of, or in favour of, two or more persons binds, or is for the benefit of, them jointly and severally.
- (k) **Includes** means includes but without limitation.

1.3 **Conditions**

Each of the provisions of this Easement will constitute and be covenants and agreements by and between the Owner of the Lot Burdened and the Owner of the

Lot Benefited and, in relation to the positive covenant, the Council for themselves and their respective successors, assigns and transferees with the intention and agreement that the benefit and burden of such covenants and agreements will pass with the benefit and burden of the Easement.

1.4 **No fetter**

- (a) Nothing in this Instrument in any way restricts or otherwise affects the unfettered discretion of the Council in the exercise of its statutory powers as a public authority.
- (b) If any conflict arises between the unfettered discretion of the Council in the exercise of its powers as a statutory authority and the performance of any right or obligation in this Instrument, the former prevails.

1.5 **GST**

- (a) In this clause 1.6:
 - (i) **GST Law** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
 - (ii) terms used in this clause which are not defined in this Instrument, but which are defined in the GST Law, have the meanings given in the GST Law.
- (b) Unless otherwise stated in this Instrument, amounts payable, and consideration to be provided, under any other provision of this document exclude GST.
- (c) If GST is payable on a supply made in connection with this Instrument, the recipient must pay the party making the supply (supplier) an additional amount equal to the GST payable on that supply provided that the supplier first issues a tax invoice to the recipient.
- (d) If an adjustment event arises in connection with a supply made in connection with this Instrument:
 - (i) the supplier must recalculate the GST payable to reflect the adjustment event;
 - (ii) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
 - (iii) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.
- (e) If a payment to a party under this Instrument is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, the payment will be:

- (i) reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense; and
- (ii) then, increased by an amount equal to the GST payable if and to the extent that the payment is consideration for a taxable supply.

2 Terms of Right of Carriageway numbered 1 above

2.1 Terms of the Easement

Subject to clauses 2.2 to 2.7 and the removal of the Breakthrough Panels in accordance with clause 3.2, the Owner of the Lot Burdened grants to the Owner of the Lot Benefited and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times with all types of vehicles for which the carriageway is designed for the purpose of accessing and servicing the Lot Benefited through the Breakthrough and to do anything reasonably necessary for that purpose.

2.2 Restriction on use for construction

Despite any other provision of this Instrument, the Easement Site cannot be used for vehicular access (or otherwise) to the Lot Benefited for the purposes of carrying out any demolition, excavation or construction works on the Lot Benefited, except for the necessary works carried out in accordance with clause 3.2.

2.3 Conditions of access

- (a) Once the Breakthrough Panels have been removed from the Easement Site the Owner of the Lot Burdened:
 - (i) must not use the Easement Site in such a way as to obstruct or unreasonably interfere with the use and enjoyment of the Easement Site by the Owner of the Lot Benefited, including ensuring that the area of the Easement Site immediately adjoining the Breakthrough is kept clear at all times; and
 - (ii) may not install additional security measures at the entrance to the Easement Site from O’Riordan Street unless:
 - (A) appropriate keys, security card-keys or other access authorities are provided to the Owner of the Lot Benefited and its Authorised Users on request;
 - (B) the security measures are operational 24-hours a day; and
 - (C) a 24-hour emergency call service is available in case of failure of the security measures to operate as designed.
- (b) The Owner of the Lot Benefited and its Authorised Users:
 - (i) must not unreasonably interfere with the enjoyment of the Easement Site by the Owner of the Lot Burdened;

- (ii) must promptly reimburse to the Owner of the Lot Burdened the reasonable costs incurred by the Owner of the Lot Burdened in restoring any damage to the improvements erected within the Easement Site caused by the negligent or improper use of the Easement Site by the Owner of the Lot Benefited or its Authorised Users, which amount shall be a liquidated debt owed by the Owner of the Lot Benefited to the Owner of the Lot Burdened;
- (iii) must comply with any reasonable directions of the Owner of the Lot Burdened in relation to the safe and orderly use of the Easement Site; and
- (iv) must cause as little disturbance or damage as possible to the Easement Site.

2.4 **No parking**

Once the Breakthrough Panels have been removed from the Easement Site neither the Owner of the Lot Burdened nor the Owner of the Lot Benefited may authorise any person to park a vehicle on the Easement Site at any time. Prior to the removal of the Breakthrough Panels from the Easement Site the Owner of the Lot Burdened may use the Easement Site for the purpose of visitor parking or storage.

2.5 **Works to Lot Burdened**

Subject to compliance with the requirements of clause 2.6, the Owner of the Lot Burdened may carry out works of any nature on or about the Lot Burdened, including without limitation, constructing, installing, removing, redeveloping or otherwise changing improvements on or about the Easement Site.

2.6 **Restrictions on access**

The Owner of the Lot Burdened may temporarily restrict access through part (but not all of) the Easement Site for the purpose of, or as a result of:

- (a) the construction, repair or maintenance of any improvement on the Site; or
- (b) carrying out obligations under paragraph 3.1 or any other obligation under this Instrument,

provided that:

- (c) such restriction is for a period not exceeding 48 hours or such other period of time as agreed by the Owner of the Lot Benefited; and
- (d) the Owner of the Lot Burdened:
 - (i) obtains the prior written consent of the Owner of the Lot Benefited and complies with any reasonable conditions imposed on that consent; and

- (ii) gives at least one month's written notice to the Owner of the Lot Benefited prior to works commencing;
- (iii) takes all reasonable steps to:
 - (A) minimise noise, dust, air pollution and disruption to access to the Easement Site by the Owner of the Lot Benefited and its Authorised Users;
 - (B) maintain security;
 - (C) maintain all services to and passing through Easement Site; and
 - (D) maintain access to the Lot Benefited.

2.7 **Emergencies**

The Owner of the Lot Burdened may restrict temporarily access to the Easement Site in an Emergency Situation provided that it gives as much notice as is practicable to the Owner of the Lot Benefited and uses all reasonable endeavours to resolve the Emergency Situation and restore access to the Easement Site as soon as possible.

2.8 **Release**

The Owner of the Lot Benefited and its Authorised Users use the Easement Site at their own risk and release the Owner of the Lot Burdened, its employees, agents and contractors (each an Indemnified Party) from all Liabilities arising out of or in connection with the use of the Easement Site by the Owner of the Lot Benefited and its Authorised Users except to the extent that that Liability arises from the default or negligent or wilful act or omission of an Indemnified Party.

2.9 **Persons empowered to release, vary or modify the Right of Carriageway**

This Right of Carriageway may only be released, varied or modified with the consent of each of the Council, the Owner of the Lot Burdened and the Owner of the Lot Benefited.

3 Terms of Positive Covenant in relation to the Right of Carriageway numbered 1 on the Plan

3.1 Maintenance of Easement Site

The Owner of the Lot Burdened:

- (a) Must at all times, keep the Easement Site in a state of good repair;
- (b) Must at all times maintain, light and manage the Easement Site so as to ensure the safe and orderly use of the Easement;
- (c) Must not permit the Easement Site to fall into disrepair so that the use of the Easement Site becomes unsafe, impractical or impossible;
- (d) Must keep the Easement Site clean and free from rubbish; and
- (e) Is entitled to charge the Owner of the Lot Benefited an operations and maintenance fee, based upon equitable use and frequency of use between the two basements or as otherwise agreed between the Owner of the Lot Burdened and the Owner of the Lot Benefited, at the same time the Owner of the Lot Benefited commences uses of the Easement.

3.2 Removal of Breakthrough Panels

- (a) If the Owner of the Lot Benefited has obtained a development consent for a development on the Lot Benefited that has basement access corresponding with the location of the Breakthrough, the Owner of the Lot Benefited may, by giving at least 28 days' notice to the Owner of the Lot Burdened, require the Owner of the Lot Burdened to provide access to the Owner of the Lot Benefited and its Authorised Users to perform works to remove the Breakthrough Panels and prepare new line markings over the Easement Site.
- (b) Prior to the Owner of the Lot Benefited providing a notice under clause 3.2(a), the Owner of the Lot Benefited must provide to the Owner of the Lot Burdened:
 - (i) a dilapidation report capturing the condition of the vehicular access point, basement ramp, basement, basement Breakthrough and Breakthrough Panels;
 - (ii) safe work method statements for the proposed work for approval or endorsement by the Owner of the Lot Burdened (acting reasonably);
 - (iii) a Construction Methodology Plan for the proposed work outlining how the Breakthrough Panels will be removed and how the future tunnel connection will connect into the basement of the Lot Burdened without compromising the structural integrity or watertightness of the structure of the Lot Burdened for approval or endorsement by the Owner of the Lot Burdened (acting reasonably);

- (iv) a structural report with modelling that demonstrates that the structure of the Lot Burdened will not be adversely affected by the proposed works or construction methodology to perform said works;
 - (v) an access management plan that details how access within the basement of the Lot Burdened will be maintained for the duration of the works for approval or endorsement by the Owner of the Lot Burdened (acting reasonably);
 - (vi) a copy of the plan showing the new signage and line marking to be implemented on completion of the works and evidence of endorsement or approval by Council and a suitably qualified traffic engineer; and
 - (vii) a copy of the required construction certificate(s) to undertake the development contemplated by the Development Consent and before it obtains the required occupation certificate(s) for the development contemplated by the Development Consent.
- (c) The Owner of the Lot Benefited must not issue a notice under clause 3.2(a) prior to receiving approval or endorsement of the items listed under clause 3.2(b) which require approval or endorsement from the relevant party.
 - (d) The notice served under clause 3.2(a) must include contact details of the relevant officer at Council that is responsible for the assessment of the Development Consent for the purpose of clause 3.4(a).
 - (e) Subject to clause 3.2(b) and 3.2(c), if the Owner of the Lot Benefited provides a notice under clause 3.2(a), the Owner of the Lot Burdened must provide access to the Owner of the Lot Benefited and its Authorised Users to remove the Breakthrough Panel and prepare new line markings over the Easement Site within 3 months of the expiry of the notice period under that notice.
 - (f) At or before the time of removing the Breakthrough Panel the Owner of the Lot Benefited must install in a good and workmanlike manner such fire doors within their site as may be required to comply with fire safety regulations in force at that time.

3.3 **Emergency Vehicles and services**

Despite any other provision of this Instrument the Owner of the Lot Burdened:

- (a) must allow the Easement Site to be used for access by all emergency and other essential service organisations; and
- (b) must not interfere with such access.

3.4 **Easement Management Plan**

- (a) The Owner of the Lot Burdened must prepare an Easement Management Plan within 6 months of receipt of notice from the Owner of the Lot Benefited that the Lot Benefited has obtained a Development Consent for a development on the Lot Benefited that has basement access corresponding with the location of the Breakthrough and provide it to the Owner of the Lot Benefited and Council for approval (with such approval not to be unreasonably withheld or delayed).
- (b) The Owner of the Lot Burdened and the Owner of the Lot Benefited must comply with the approved Easement Management Plan.
- (c) Council and the Owner of the Lot Benefited may review the effectiveness of the Easement Management Plan and require it to be amended, but no more than once in any 12 month period.

3.5 **Insurance**

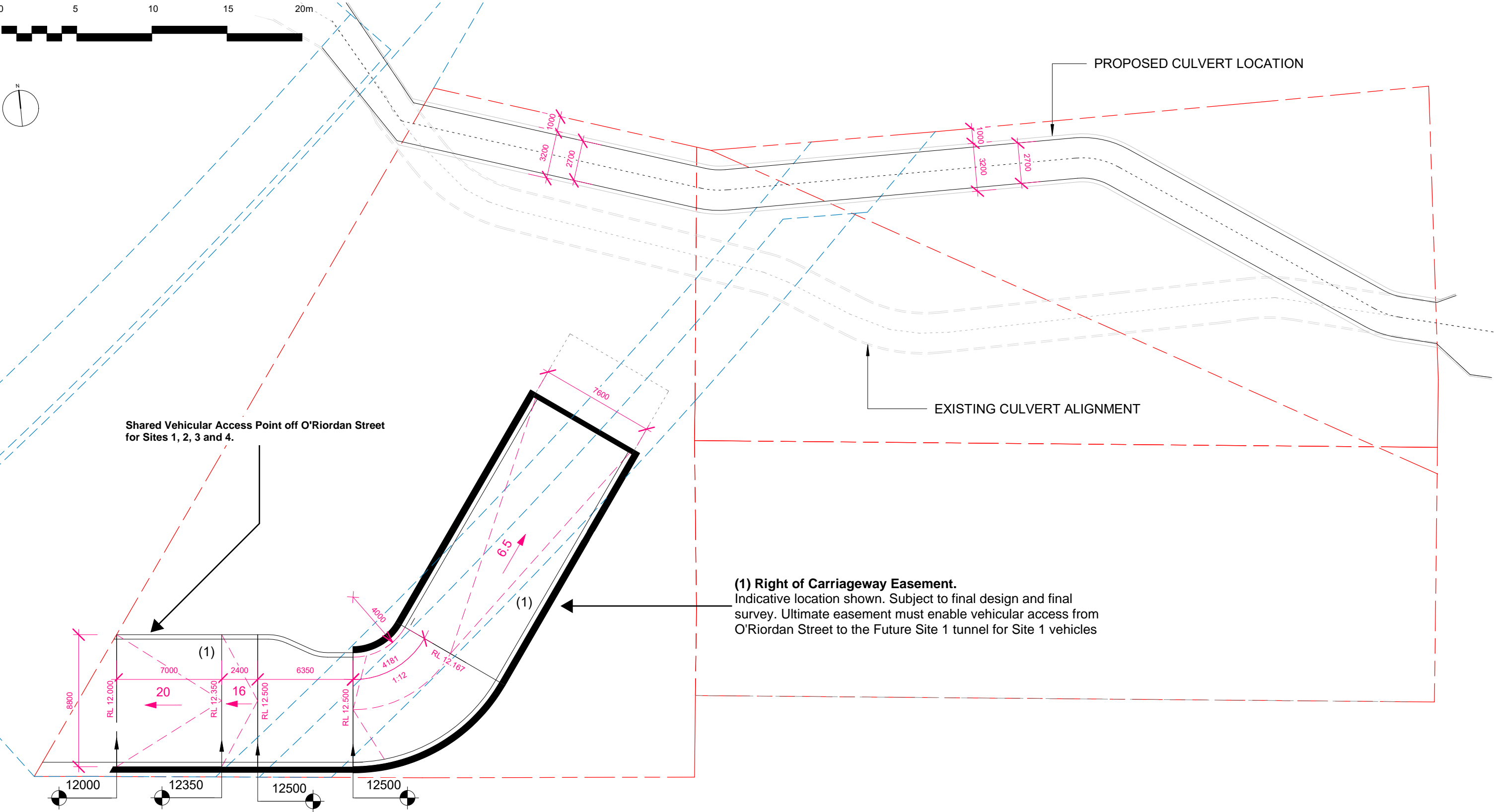
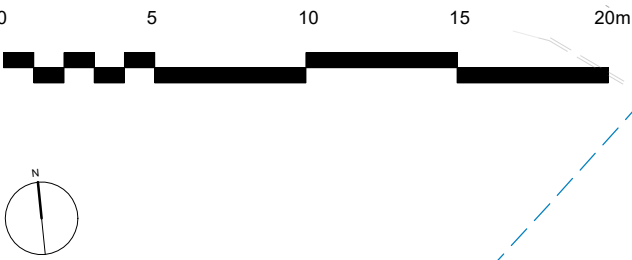
- (a) Each of the Owner of the Lot Burdened and the Owner of the Lot Benefited must take out and maintain:
 - (i) a public liability insurance policy with respect to any Liabilities to any person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million; and
 - (ii) industrial special risks insurance in respect of its improvements and operations on the Easement Site for their full replacement value.
- (b) The certificates of currency for the policy referred to in paragraph 3.5(a)(i) must note the other owner as an interested party.
- (c) The policies referred to in paragraphs 3.5(a) must be taken out and maintained with an insurer licensed by the Australian Prudential Regulation Authority to operate in Australia or have an investment grade security rating from an industry recognised rating agency such as Standard and Poors, Moodys or Bests.

3.6 **Persons empowered to release, vary or modify the Positive Covenant**

This Positive Covenant may only be released, varied or modified with the consent of each of the Council, the Owner of the Lot Benefited and the Owner of the Lot Burdened.

ANNEXURE C

CONCEPT DESIGN
INDICATIVE ONLY



- (1) Right of Carriageway Easement
- | | |
|-------------------|------------------|
| Lots Burdened: | Lots Benefited: |
| - Lot 3 DP1015619 | - Lot 1 DP456791 |
| - Lot 4 DP1015619 | - Lot 1 DP575225 |
| - Lot 3 DP25272 | - Lot D DP81525 |

INDICATIVE RIGHT OF CARRIAGEWAY EASEMENT

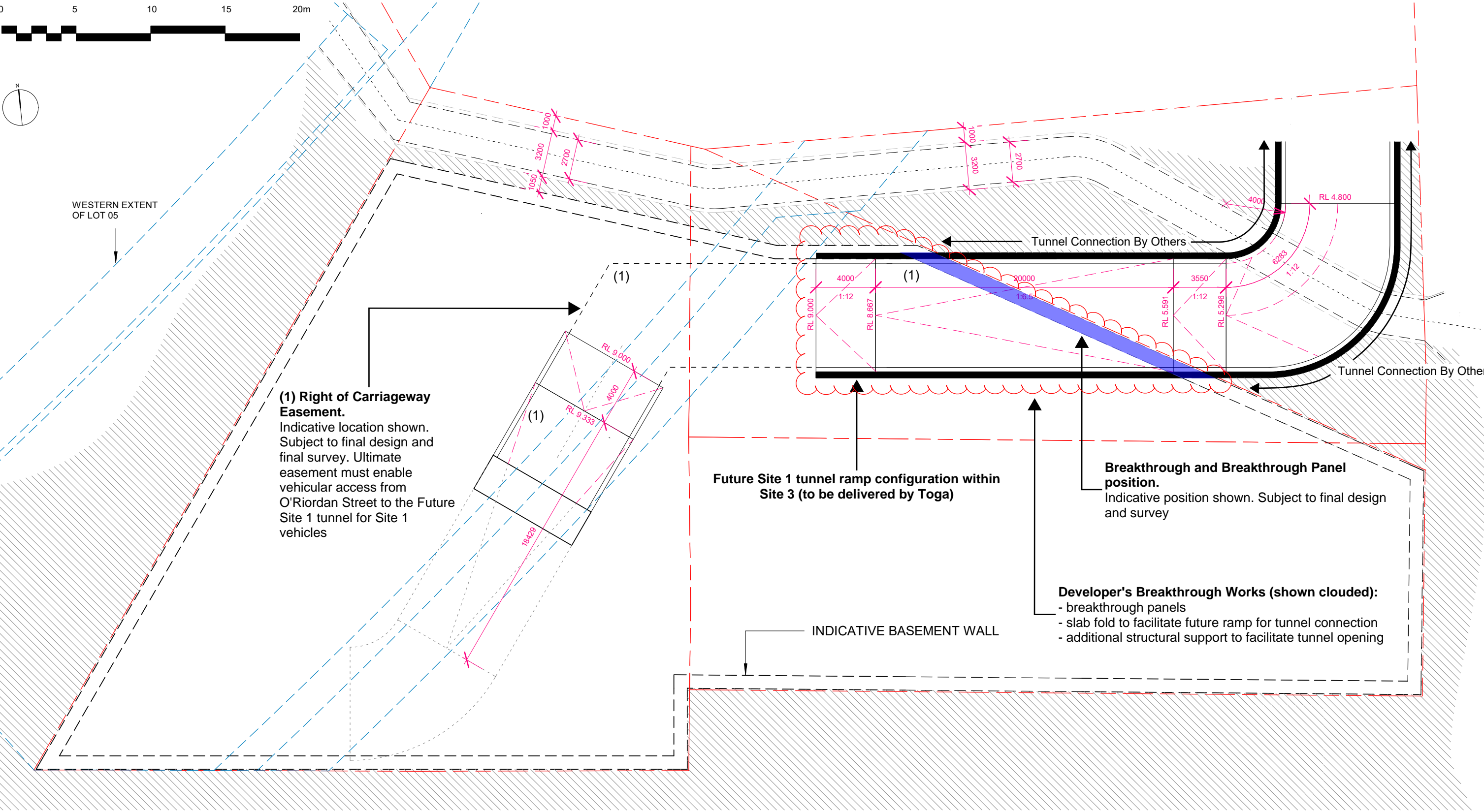
Green Square

Ground
ROCE-001

20/11/2020
1 : 250 (A3)

ANNEXURE C

CONCEPT DESIGN
INDICATIVE ONLY



- (1) Right of Carriageway Easement
- | | |
|-------------------|------------------|
| Lots Burdened: | Lots Benefited: |
| - Lot 3 DP1015619 | - Lot 1 DP456791 |
| - Lot 4 DP1015619 | - Lot 1 DP575225 |
| - Lot 3 DP25272 | - Lot D DP81525 |

INDICATIVE RIGHT OF CARRIAGEWAY EASEMENT

Green Square
Basement Level B1
ROCE-002