

Formal Instrument of Agreement

Barangaroo Stage 1 – Hickson Road Upgrade

Date ►

29 June 2017

Between the parties

LENLEASE (MILLERS POINT) PTY LIMITED, ABN 96 367 164 319 as trustee of the Lend Lease Millers Point Trust of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000 and **BARANGAROO DELIVERY AUTHORITY** ABN 94 567 807 277, a NSW government agency constituted under the Barangaroo Delivery Authority Act 2009 (NSW) (**Principal**)

LENLEASE BUILDING PTY LIMITED ABN 97 000 098 162 of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000 (**Contractor**)

Background

1. The Contractor has offered to carry out the Works under the Contract on the terms set out in the Contract.
2. The Principal has agreed to accept the offer by the Contractor on the terms set out in the Contract.

1 Nature of Contract

The Contractor shall carry out and complete the Works in accordance with the Contract.

The Principal shall pay the Contractor the Contract Sum at the times and in the manner provided for in the Contract.

To the extent that the Contractor performed any work under the Contract prior to the date of execution of this Contract, the parties agree that the terms of this Contract apply to those Works.

2 Contract Documents

The following documents comprise the Contract between the parties:

- | | | |
|-----|---|----------------------------------|
| (a) | this Formal Instrument; | |
| (b) | the General Conditions of Contract; and | |
| (c) | ANNEXURE PART A - | Contract Particulars |
| (d) | ANNEXURE PART B - | Principal's Project Requirements |
| (e) | ANNEXURE PART C - | Scope of Works |
| (f) | ANNEXURE PART D - | Not used |

(g)	ANNEXURE PART E -	Contractor's Program
(h)	ANNEXURE PART F -	Variation Valuation Principles
(i)	ANNEXURE PART G -	Independent Certifier Deed
(j)	ANNEXURE PART H -	Moral Rights Consent Letter
(k)	ANNEXURE PART I -	Warranties Schedule
(l)	ANNEXURE PART J -	Not Used
(m)	ANNEXURE PART K -	Construction Zone Plan
(n)	ANNEXURE PART L -	Deed of Novation
(o)	ANNEXURE PART M -	Utilities Plan
(p)	ANNEXURE PART N -	Principal's Scope

3. Entire Agreement

The documents listed above together with the Contractor's Offer constitute the entire agreement between the parties in respect of the Works and this Contract supersedes all previous agreements, undertakings and communications, whether written or oral, relating to the subject matter of the Contract.

For the avoidance of doubt, any works carried out by the Contractor pursuant to any Management Services Agreement shall be deemed to be part of the Works and any amounts payable by the Principal pursuant the Management Services Agreement shall be deemed to be part of the Contract Sum and payable pursuant to the Contract.

4 Parties to give effect to the Contract

The parties agree that they shall do everything reasonably necessary to give effect to the Contract. Without limiting the foregoing, the parties shall procure the novation to the Contractor of any relevant consultants engaged directly by the Principal.

Executed as an agreement

SIGNED BY LENDLEASE (MILLERS POINT)
PTY LIMITED by its duly authorised
representative:

[Redacted Signature]

Witness

[Redacted Signature]

Authorised Representative

[Redacted Name]

Print name

[Redacted Name]

Print name

[Redacted Signature]

Witness

[Redacted Signature]

Authorised Representative

[Redacted Name]

Print name

[Redacted Name]

Print name

SIGN

THE SEAL of BARANGAROO DELIVERY AUTHORITY is affixed in the presence of:



[Redacted signature area]

Signature of witness

[Redacted signature area]

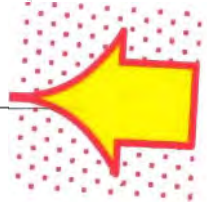
Signature of Chief Executive Officer

[Redacted name area]

Name of witness

[Redacted name area]

Name



MEME

SIGNED BY LENDLEASE BUILDING PTY LIMITED by its duly authorised representative:

[Redacted signature area]

[Redacted signature area]

Authorised Representative

[Redacted name area]

Print name

[Redacted name area]

Print name

**Adapted from AS 4300-1995
(Revision 4)**

General Conditions of Contract – Lump Sum

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General Conditions of Contract

1. DEFINITIONS

In this Contract, except where the context otherwise requires, the following meanings apply:

Barangaroo Delivery Authority	means the statutory authority constituted by the <i>Barangaroo Delivery Authority Act 2009</i> (NSW).
Business Day	Monday to Friday (inclusive), excluding NSW public holidays.
Certificate of Practical Completion	means the written statement by the Independent Certifier certifying that on the date specified in that statement the Works have reached Practical Completion pursuant to clause 42.
Code	means: <ul style="list-style-type: none"> (a) the NSW Government Code of Practice for Procurement (2005); and (b) the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (July 2013).
Construction Zone Plan	means the plan attached in Annexure Part K.
Constructional Plant	means appliances, machinery and things used in the execution of the work under the Contract but not forming part of the Works.
Consultant	means any person engaged by the Contractor to perform consultancy services in connection with the work under the Contract.
Contamination	means any solid, liquid, gas, odour, heat, sound, vibration, radiation or substance of any kind on, in or under land or water, including asbestos which makes or may make land or water unsafe, unfit or harmful for habitation, use or occupation by any person or animal or is such that any part of the land or water does not satisfy the applicable regulatory criteria or standards.
Contract	means the agreement between the Principal and the Contractor comprised of the documents referred to in Clause 2.1 of the Formal Instrument of Agreement.
Contract Sum	means the lump sum amount specified in item 5 of Annexure Part A and which includes: <ul style="list-style-type: none"> (a) all costs associated with the carrying out and completion of the work under the Contract; (b) an amount in respect of the Contractor's charges for preliminaries and supervision; (c) the Contractor's reasonable margin and overheads; and (d) all costs associated with the Contractor's Design Obligations; which will be adjusted, as required, wherever the Contract provides that an amount is payable, allowable or due to either party by or from the other party.

Contractor's Design Obligations	means all tasks necessary to design and specify the Works required by the Contract, including preparation of the Design Documents and, if the Principal's Project Requirements include a Preliminary Design, developing the Preliminary Design.
Contractor's Offer	means the Contractor's offer in respect of the Works dated 7 April 2017.
Contractor's Program	is a statement in writing showing the major activities in the work under the Contract, the dates by which or the times within which key decisions are to be made and information is to be provided and the various stages or parts of the work under the Contract are to be executed or completed and, as at the date of the Contract, the approved program is attached in Annexure Part E.
Date for Commencement	means the date specified in item 4.1 of Annexure Part A.
Date for Practical Completion	means the date or last day of the period specified in Annexure Part A as adjusted from time to time in accordance with the Contract or allowed in any binding dispute resolution proceedings.
Date of Practical Completion	means the date certified by the Independent Certifier as being when Practical Completion was achieved under the Contract, or a different date determined in any binding dispute resolution proceedings.
Day	means a calendar day.
Defects Liability Period	means the period or periods of 12 months referred to in Clause 43 for the rectification of defects.
Design Documents	means the drawings, plans, specifications and other information, samples, models, patterns and the like required by the Contract and created for the construction of the Works, developed by the Contractor.
Development Consent Conditions	means the consent conditions issued by the relevant Government Agency which are included as part of the Principal's Project Requirements in Annexure Part B.
Direction	includes agreement, approval, authorization, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
Direction Date	means, in respect of each Principal Scope Variation, the date nominated as the 'Direction Date' for that item in Annexure Part N
Environment	includes all aspects of the surroundings of human beings.
Excepted Risk	means any of the risks referred to in Clause 10.3 which are the responsibility of the Principal.
Final Completion Certificate	means the certificate under which the Independent Certifier certifies that all defects and omissions in the Works have been rectified.
Final Completion	means in respect of the Works, the point in time when the Works have been carried out such that a Final Completion Certificate must issue.
Final Payment Certificate	means the final payment certificate issued by the Independent Certifier to the Principal and to the Contractor pursuant to Clause 48.1.
Final Payment Claim	means the final payment claim submitted by the Contractor to the Independent Certifier in accordance with Clause 46.

Force Majeure Event	means any of the following events or circumstances to the extent they are not caused or contributed to by the Contractor:
	(a) war (undeclared or declared), civil war, civil commotion, demonstrations, insurrections, riots, floods, explosions, acts of terrorism, earthquakes, substantial fires, acts of God or the public enemy or sabotage;
	(b) state-wide or national industrial disputes, stoppages or strikes;
	(c) any strike, lockout or other industrial action or dispute, which was caused or contributed to by the acts or omissions of the Principal or any other public Authority; or
	(d) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste, not caused by the Contractor or those for whom it is responsible and which could not have been avoided by the Contractor using its reasonable endeavours.
Government Agency	means any government, public, statutory, governmental, semi-governmental, local government or judicial body, entity or authority and includes a Minister of the Crown (in any right), Barangaroo Delivery Authority, Sydney Metro, Transport NSW, City of Sydney and any person, body, entity or authority exercising power pursuant to an Act of Parliament.
GST	has the meaning in the GST Act.
GST Act	means <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
Independent Certifier	means the person appointed by the Principal to be the Independent Certifier and any replacement appointment from time to time.
Independent Certifier Deed	means the deed attached as Annexure Part G.
Intellectual Property Rights	means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade-marks, know how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.
Key Personnel	means the Contractor's employees which the Principal considers to be critical to the success of the Project as identified in item 1.3 of Annexure Part A.
Latent Condition	means a physical condition of the Site or its surroundings as described in clause 28.1.

Legislative Requirement	includes:- <ul style="list-style-type: none"> (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Contract or any part thereof is being carried out; (b) the NSW Government Code of Practice for the Construction Industry and the Code; (c) certificates, licences, consents, permits, approvals and requirements of organisations (including Government Agencies) having jurisdiction in connection with the carrying out of the work under the Contract, including the Development Consent Conditions ('Approvals') and any environmental planning instruments; and (d) fees and charges payable in connection with the foregoing.
Lendlease GMRs	means the Lendlease Global Minimum Requirements (including means and methods) and Environmental Health and Safety Standards adopted by the Contractor and as amended from time to time.
Management Services Agreement	means the professional services agreement entered into between the parties in relation to the concept design and cost planning phase of the Works.
Month	means a calendar month.
Moral Rights	means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any Law (including the <i>Copyright Act 1968</i> (Cwlth) or any Law outside Australia), that exist now or in the future anywhere in the world.
OH&S Act	means the <i>Work Health & Safety Act 2011</i> (NSW).
OH&S Plan	means the site specific health and safety management plan to be prepared in relation to the Works as required by the OH&S Regulation.
OHS Regulation	means the <i>Work Health and Safety Regulation 2011</i> (NSW).
PCG	means the project control group to be constituted under clause 22.
Practical Completion	means, in respect of the Works, the point of time at which: <ul style="list-style-type: none"> (a) Not used; (b) the Works are fit for use and occupation and capable of being lawfully used and occupied for their stated purpose; (c) all certificates required for the use of Works as required by the Contract have been issued and provided to the Principal; (d) Not used; (e) the Works have been completed in accordance with the Contract (including all Design Documents and Legislative Requirements); (f) the Works are otherwise complete and free from defects, except for minor omissions or defects: <ul style="list-style-type: none"> (A) Not used; (B) which the Independent Certifier determines the Contractor has reasonable grounds for not

- promptly rectifying prior to Practical Completion;
and
- (C) rectification of which will not prejudice the safe and convenient use of any part of the Works;
- (g) those tests which are required by the Contract to be carried out and passed before the Works reaches Practical Completion, have been carried out and passed;
- (h) documents and other information required under the Contract which, are essential for the use, operation and maintenance of the Works have been supplied to the Principal (including all necessary certified survey plans as certified by a registered surveyor);
- (i) (if relevant) the Contractor has carried out and completed any reinstatement and rectification of the Site and any infrastructure required as a result of carrying out the Works;
- (j) Not used;
- (k) Not used
- (l) Not used
- (m) all rubbish, packaging and surplus building material has been removed (unless otherwise agreed between the Principal and the Contractor);
- (n) Not used; and
- (o) Not used.

Principal's Project Requirements

means the written summary or outline of the Principal's requirements for the Works described in the documents stated in Annexure Part B and which:

- (a) includes the stated purpose for the Works;
- (b) may include the Principal's design, timing and cost objectives for the Works;
- (c) includes where applicable, the social sustainability and green rating requirements for the Works; and
- (d) includes the Development Consent Conditions required to be complied with by the Contractor.

Principal's Representative

means the person specified in item 1.8 of Annexure Part A.

Principal's Scope

means the Principal's scope of works set out in Annexure Part N

Principal's Scope Variation

means a Variation directed in accordance with clause 32.4B.

Provisional Sum

includes monetary sum, contingency sum and prime cost item

Related Works Contract

any contract (other than this Contract) entered into between Lendlease (Millers Point) Pty Limited and the Contractor in its capacity as 'contractor' for the provision of works or services performed or required to be performed by it, concurrently or sequentially with the Work under this Contract:

- (a) at or adjacent to the Site; or
- (b) which is, in any way, related to the WUC or Barangaroo.

Relic	<p>means:</p> <ul style="list-style-type: none"> (a) minerals of commercial value; (b) fossils; (c) relics, articles or objects of antiquity or of anthropological or archaeological interest; (d) coins or other articles of value; (e) historical archaeological sites; and (f) Aboriginal archaeological relics.
Separable Portion	<p>means a portion of the work under the Contract described in the Contract as a Separable Portion or which the Principal has determined pursuant to Clause 38.3 shall be a Separable Portion.</p>
Services	<p>means roads, footpaths, bridges, electricity, gas or water mains, telephone cabling, signalling cables, drainage, sewerage, other communications infrastructure or equipment required for or in connection with the Works including any services or systems which require extension or variation as a consequence of the Works whether inside or outside the Site boundary.</p>
Site	<p>means the lands and other places to be made available and any other lands and places made available to the Contractor by the Principal for the purpose of the Contract indicated on the Construction Zone Plan.</p>
Special Event	<p>means any planned activity that is:</p> <ul style="list-style-type: none"> (a) wholly or partly conducted on land owned by the Authority or on Hickson Road; (b) requires special management arrangements; (c) involves large numbers of participants or spectators; and (d) notified by the Principal to the Contractor in accordance with clause 62, <p>and may include New Year's Eve, Australia Day and the Sydney Marathon.</p>
Subcontractor	<p>means any person engaged to carry out any part of the work under the Contract other than the Contractor, and includes a consultant.</p>
Survey mark	<p>in Clause 27, means a survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work under the Contract.</p>
Temporary Works	<p>means works used in the execution of the work under the Contract but not forming part of the Works.</p>
Utility	<p>means any utility service, including water, electricity, gas, telephone, drainage, sewerage, stormwater, communications</p>
Utility Infrastructure	<p>means any part of the supply, distribution or reticulation network owned, operated or controlled by a Utility Owner or Utility provider, including poles, pipes, pipeline, cables, wires, connections, conduits, tunnels, aqueduct, electrical installation telecommunications plant, water channel and electronic communications systems.</p>
Utility Owner	<p>means any person having jurisdiction over, control or ownership of, any Utility or Utility Infrastructure.</p>

Variation	a variation of the kind contemplated in clause 32.1(a) to (e) (inclusive) and 32.4B.
work under the Contract or WUC	means the work which the Contractor is or may be required to execute under the Contract and includes the Contractor's design obligations, Variations, remedial work, Constructional Plant and Temporary Works.
Works	means the whole of the works to be executed under the Contract which is to be handed over to the Principal by the Contractor, as more specifically described in Annexure Part B and Annexure Part C, together with any Variations (which the Contractor is required to proceed with in accordance with the Contract) carried out and completed in accordance with the Contract.

2. INTERPRETATION

In this agreement:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this agreement;
- (b) the singular includes the plural, the plural includes the singular and words of any gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined have a corresponding meaning;
- (d) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency as well as an individual;
- (e) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this agreement and a reference to this agreement includes any schedule, attachment and exhibit;
- (f) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (g) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (h) a reference to a party to a document includes that party's successors and permitted assignees;
- (i) a promise on the part of two or more people bind them jointly and severally;
- (j) a reference to an agreement other than this agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) no provision of this agreement will be construed adversely to a party because that party was responsible for the preparation of it;
- (l) the use of "including," "for example" or similar expressions does not limit what else is included;
- (m) where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (n) a reference to a body, other than a party to this agreement (including an institute, association or authority), whether statutory or not:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

3. SERVICE OF NOTICES

A notice shall be deemed to have been given when it is received by the party to whom it is addressed or is delivered to the address of that party stated in the Contract or last communicated in writing by that party to the party giving the notice, whichever is the earlier.

The Principal and the Contractor shall each notify the others of a change of address.

Without limiting the generality of 'notice', it includes an electronic document.

4. CONTRACT DOCUMENTS

4.1 Discrepancies

The several documents forming the Contract are to be taken as mutually explanatory of one another. If either party discovers any ambiguity or discrepancy in any document prepared for the purpose of executing the work under the Contract, that party shall notify the Principal's Representative in writing of the ambiguity or discrepancy. In the event of an ambiguity or discrepancy being discovered and brought to the attention of the Principal's Representative, or discovered by the Principal's Representative or Independent Certifier, the Principal's Representative shall direct the Contractor as to the interpretation to be followed by the Contractor in carrying out the work.

Where possible, the order of precedence in the Formal Instrument of Agreement shall apply in resolving an ambiguity or discrepancy between the documents comprising the Contract.

If the direction causes the Contractor to incur more or less cost than the Contractor, having regard to clause 4.3, could reasonably have anticipated at the date of the Contractor's Offer, then to the extent that:

- (a) such ambiguity or discrepancy is in the Design Documents or between the Design Documents and the Principal's Project Requirements or between the Design Documents and Annexure Part C; or
- (b) the direction in respect of the ambiguity or discrepancy is consistent with the order of precedence in the Formal Instrument of Agreement,

any such ambiguity or discrepancy shall be at the Contractor's risk and the direction shall not entitle the Contractor to any extra payment or an extension of time.

4.2 Dimensions

Where any discrepancy exists between figured and scaled dimensions, the figured dimensions shall prevail.

4.3 Supply of Documents by Principal

The Principal shall supply to the Contractor the documents describing the Principal's Project Requirements and other documents required by the Contract to be supplied by the Principal to the Contractor.

Documents supplied by the Principal to the Contractor shall remain the property of the Principal and shall be returned by the Contractor to the Principal on demand in writing. The documents shall not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.

4.4 Supply of Documents by Contractor

The Contractor shall supply to the Principal, Principal's Representative and Independent Certifier the documents and information (including drafts) required by any of them and as required by the Contract, in a form satisfactory to the Principal, Principal's Representative and Independent Certifier (as relevant) and at those times reasonably required by them or otherwise within those stages applicable to the documents stated in Annexure Part A (or, if no times or stages are stated, promptly and in any event not less than 14 days before the work contained in those documents is commenced).

A direction by the Principal's Representative to vary anything in the Design Documents shall be a Variation to the work under the Contract only to the extent that the Design Documents, before such Variation, complied, or would have complied, with the Principal's Project Requirements.

Neither the Principal, the Principal's Representative nor the Independent Certifier shall be bound to review or comment upon the Design Documents or to check the Design Documents for errors, omissions or compliance with the requirements of the Contract. The Principal's or the Principal's Representative's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Contractor, shall not relieve the Contractor from responsibility for the Contractor's errors or omissions or departure from the Contractor's Design Obligations or other requirements of the Contract.

If the Contract provides that the Contractor must obtain the Principal's Representative's direction as to whether documents are suitable or are not suitable then, within the time stated in Annexure Part A or, if no time is stated, within 14 days after receipt of the documents, the Principal's Representative shall notify the Contractor that the documents are suitable or are not suitable. If the Principal's Representative notifies the Contractor that the documents are not suitable, the Principal's Representative shall give reasons why the documents are not suitable and the Contractor shall submit new or amended documents for the Principal's Representative's direction pursuant to this Clause 4.4.

4.5 Availability of Documents

Whilst work under the Contract is being performed, one complete set of the Principal's Project Requirements, the Design Documents and other written information supplied by the Principal, the Principal's Representative, the Contractor, the Contractor's Consultants or subcontractors, shall be kept by the Contractor at the Site or other location approved in writing by the Principal and shall be available at all times for reference by the Principal, the Principal's Representative, the Independent Certifier and any persons nominated in writing by either of them.

During the manufacture or assembly of any significant part of the work under the Contract away from the part of the Site where the Works are to be constructed, a set of the drawings and written information relevant to that part of the work shall be kept by the Contractor at the place of manufacture or assembly and shall be available for reference by the Principal, the Principal's Representative, the Independent Certifier and any persons nominated in writing by either of them.

4.6 Confidential Information

Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Contractor or the Principal and marked or otherwise identified as confidential, shall be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party to the Contract.

Provided that, the provisions of this clause do not apply to such information which is required to be disclosed:

- (a) to the Independent Certifier;
- (b) to a party's officers, employees, consultants (provided the recipient is bound by a duty of confidentiality);
- (c) by law or ASX listing rule,;
- (d) to a court or arbitrator; and/or
- (e) to a financier in relation to the Works;

or where such information is already in the public domain.

If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the issue of the Final Completion Certificate pursuant to Clause 43 or the earlier termination of the Contract.

5. SECURITY, RETENTION MONEYS AND PERFORMANCE UNDERTAKINGS

5.1 Purpose

Security, retention moneys and performance undertakings are for the purpose of ensuring the due and proper performance of the Contract by the Contractor.

5.2 Provision of Security

Unless otherwise agreed in writing the Contractor shall provide security for its performance of the work under the Contract in the amount stated in item 2.1 of Annexure Part A and in accordance with this Clause 5. Where the security is provided under clause 5.3 below, it shall be provided within 28 days of the date specified in Item 2.3 of Annexure Part A.

5.3 Form of Security

The security shall either be in the form of cash, an approved unconditional undertaking given by an approved financial institution or insurance company, or other form approved by the Principal.

5.4 Retention Moneys

In lieu of providing security in the form approved under clause 5.3, the parties may agree that the Principal may retain and hold money otherwise payable under clause 46 as security. Any such retention monies shall be deducted in accordance with Clause 46.1 and Item 2.1 of Annexure Part A.

5.5 Conversion of Security and Recourse to Retention Moneys

The Principal may have recourse to security, retention moneys or both and may convert into money security that does not consist of money where-

- (a) the Principal remains unpaid after the time for payment has elapsed;
- (b) after the time for payment has elapsed, the Principal has given the Contractor notice in writing for the period of 5 days, of the Principal's intention to have recourse to the security, retention moneys or both; and
- (c) the period of 5 days has elapsed since the notice was given.

5.6 Substitution of Security for Retention Moneys

The Contractor shall be at liberty at any time to provide in lieu of retention moneys, security in any of the forms permitted in Clause 5.3. To the extent that such security is provided, the Principal shall not deduct retention moneys and shall forthwith release retention moneys.

5.7 Reduction of Security and Retention Moneys

Upon the issue of the Certificate of Practical Completion, the Principal's entitlement to security and retention moneys shall be reduced to the percentage specified in item 2.2 of Annexure Part A.

5.8 Release of Security and Retention Moneys

Upon the issue of the Final Completion Certificate the Principal shall release all remaining security and retention monies (if any) to the Contractor.

If the Contractor has provided additional security for any item of unfixed plant and materials pursuant to Clause 46.8, the Principal shall release that additional security to the Contractor within 14 days of the incorporation into the Works of the unfixed plant or materials.

5.9 Holding of and Interest on Cash Security and Retention Moneys

The Principal shall own any interest earned on the cash security or retention moneys.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Ownership of Intellectual Property

The Contractor grants to the Principal an irrevocable, royalty free, transferable right to use and modify all Intellectual Property Rights in relation to any Design Documents, materials, documents and methods of working produced by or on behalf of the Contractor for the purpose of the Works, including the right to use such items for the purpose of operating, maintaining, repairing, rectifying, adding to and altering the Works.

The Contractor must deliver to the Principal all documentation the subject of the licence under this clause 6.1 as is reasonably requested by the Principal from time to time.

6.2 Not used

6.3 Moral Rights

The Contractor:

- (a) warrants that it has or will obtain an undertaking, from each individual author employed by each party performing any design work in relation to the Works, not to enforce any Moral Rights that author may have, now or in the future, in any such design work in which copyright subsists, so that the Principal and its assigns may freely exercise their rights pursuant to the licence granted under clause 6.1;
- (b) must, as soon as reasonably practicable after the date of the Contract, procure each individual author employed by each party performing any design work in relation to the Works to sign the Moral Rights letter of consent comprising Annexure Part H; and

- (c) must provide to the Principal a copy of all Moral Rights letters of consent signed by the relevant individual authors pursuant to clause 6.3(b) as soon as those signed letters of consent are received from the individual authors.

6.4 Warranties and Indemnities

Unless otherwise provided in the Contract, the Principal shall indemnify the Contractor against the Principal's Project Requirements, the design, materials, documents and methods of working required by the Principal in the Contract or provided or directed by the Principal or the Principal's Representative infringing any patent, copyright, registered design, trademark or name, or other protected right.

The Contractor warrants that unless otherwise provided in the Contract, the Contractor owns the copyright in those of the Design Documents provided by the Contractor (or otherwise has the right, for example by way of licence (including a right to sub-licence), to deal with the copyright in those Design Documents as contemplated by the Contract). The Contractor also indemnifies the Principal against any design, materials, documents and methods of working provided by the Contractor infringing any patent, copyright, registered design, trademark or name, or other protected right.

7. LEGISLATIVE REQUIREMENTS

7.1 Responsibility for Approvals

- (a) Each party must, at its own cost, apply for, obtain and maintain the Approvals nominated in Annexure Part B as to be obtained by that party.
- (b) Each party must, at their own cost, provide reasonable assistance to the other party in complying with its obligations under clause 7.1(a).
- (c) Each party may, at any time, by written notice, to the other party request the other party to provide it with a copy of any information, correspondence and documents (including drafts) provided by it to any Authority (or received from any Authority) in connection with any Approvals for which that other party is responsible. The other party must, promptly (and in any event by the time, if any, reasonably required by the party in its notice), comply with such request.

7.2 Complying with Legislative Requirements

Except as expressly stated otherwise in the Contract, the Contractor shall comply with, carry out the Works in accordance with and complete the Works so that they comply with, all applicable Legislative Requirements.

Except as expressly stated in Annexure Part B or otherwise in the Contract, the Contractor must pay all fees and charges legally demandable or required in accordance with all Legislative Requirements;

If a Legislative Requirement is at variance with a provision of the Contract or the Principal's Project Requirements, as soon as the Contractor discovers the variance, the Contractor shall notify the Principal in writing specifying the difference.

7.3 Changes in Legislative Requirements

If a Legislative Requirement changes or comes into effect after the date of this Contract (other than a requirement of the Building Code of Australia) and it -

- (a) necessitates-
 - (i) a change to the Works;
 - (ii) a change to so much of the Temporary Works, Constructional Plant or method of working as may be specified in the Principal's Project Requirements;
 - (iii) a change, being the provision or expansion of services of a municipal, public or statutory authority in connection with the Works or Temporary Works; or
 - (iv) an increase or decrease in a fee or charge or payment of a new fee or charge; and
- (b) could not reasonably have been anticipated by a competent contractor prior to the date of the Contract,

then the Contractor must promptly notify the Principal (which notice must set out all details required by clause 32.2) and, to the extent that such change causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference shall be valued as a Variation under Clause 32.5.

7.4 Compliance

- (a) Without limiting the Contractor's obligations in clause 7.1 above, the Contractor must comply with all Legislative Requirements concerning:
 - (i) emissions of substances into the atmosphere, waters and land;
 - (ii) pollution and Contamination of the atmosphere, waters and land;
 - (iii) production, use, handling, storage, transportation and disposal of:
 - A. waste;
 - B. hazardous substances;
 - C. dangerous goods;
 - (iv) threatened, endangered and other flora and fauna species;
 - (v) conservation, heritage and natural resources; and
 - (vi) the health and safety of people.
 - (b) The Contractor must promptly give the Principal notice of any notice relating to the Environment or safety of the Site notified to, or served on, the Contractor or which the Contractor is required by any Legislative Requirement to give or any other notice relating to the Site which is materially relevant to the Principal, together with reasonable detail of the content of the relevant notice received or given.
- 7.5 Not used

8. PROTECTION OF PEOPLE AND PROPERTY

In the course of carrying out and completing the work under the Contract, the Contractor shall-

- (a) provide all things and take all measures prudent and necessary to protect people and property;
- (b) avoid unnecessary interference with the passage of people and vehicles in and around the Site; and
- (c) provide all things and take all measures prudent and necessary (including by working only during permitted hours) to prevent nuisance and unreasonable noise, dust and disturbance.

Without limiting the generality of the Contractor's obligations, they include the provision of hoarding, barricades, security guards, fencing, temporary roads, footpaths, warning signs, lighting, watching, traffic flagging, safety helmets and clothing, removal of obstructions and protection of services.

If the Contractor or the employees or agents of the Contractor damage property, including but not limited to public utilities and services and property on or adjacent to the Site, the Contractor shall promptly make good the damage and pay any compensation which the law requires the Contractor to pay.

If the Contractor fails to comply with an obligation under this Clause 8, in addition to any other remedies of the Principal, the Principal's Representative may after giving reasonable notice in writing to the Contractor, have the subject work carried out by other persons and the reasonable cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

Any site cranes used for the work under the Contract must remain fully within the Site. If the Contractor wishes to locate any crane, or the boom swing of any crane, over or on land outside of the Site, it must first obtain all necessary approvals (including the approval of any relevant adjoining lessees or occupiers of land).

9. URGENT PROTECTION

- (a) The Principal, and its nominees may, in an emergency or possible emergency (and whether or not the Contractor is aware of it), have reasonable access to the Works or the Site having regard to the nature of the emergency or possible emergency, and take whatever action it considers is reasonably necessary to eliminate (or to assist the Contractor to eliminate) the emergency.
- (b) If urgent action is (or may be) necessary to protect the work under the Contract, the environment, other property or people (including during an emergency or possible emergency), the Contractor must notify the Principal as soon as practicable and take any action it is required to take.

- (c) If the Contractor fails to take the action, in addition to any other remedies of the Principal, the Principal may take the necessary action. If the action was action which the Contractor should have taken at the Contractor's cost, the reasonable cost incurred by the Principal in the circumstances shall be a debt due from the Contractor to the Principal. If time permits, the Principal shall give the Contractor prior written notice of the intention to take action pursuant to this Clause 9.

10. CARE OF THE WORK AND REINSTATEMENT OF DAMAGE

10.1 Care of the Work Under the Contract

Except as provided in Clause 10.3, the Contractor shall be responsible for-

- (a) the care of the whole of the work under the Contract from and including the date of commencement of the Works to 4:00 pm on the Date of Practical Completion, at which time, the responsibility for the care of the Works (except to the extent provided in Clause 10.1(b)) shall pass to the Principal; and
- (b) the care of outstanding work and items to be removed from the Site by the Contractor after 4:00 pm on the Date of Practical Completion until completion of outstanding work or compliance with the Contractor's obligations under Clauses 29, 30 and 43.

Without limiting the generality of the Contractor's obligations in Clause 10.1(a), the Contractor shall be responsible for the care of unfixed items the value of which has been included in a payment certificate under Clause 46.1, things entrusted to the Contractor by the Principal for the purpose of carrying out the work under the Contract, and things brought onto the Site by Subcontractors for that purpose. The Contractor shall provide the storage and protection necessary to preserve those items and things.

10.2 Reinstatement

If loss or damage occurs to the work under the Contract during the period for which the Contractor is responsible for the care thereof, other than loss or damage caused by any of the Excepted Risks referred to in Clause 10.3, the Contractor shall, promptly notify the Principal and the Principal's Representative of such loss or damage and, at the Contractor's cost, rectify such loss or damage so that the work under the Contract conforms in every respect with the provisions of the Contract.

In the event of loss or damage being caused by any of the Excepted Risks (whether or not in combination with other risks), the Contractor shall, if and to the extent directed by the Principal's Representative, rectify the loss or damage, which shall be deemed to be a Variation under Clause 32. In the case of loss or damage being caused by a combination of Excepted Risks and other risks, any such direction and consequential valuation made under Clause 32.5 shall take into account the proportional responsibility of the Contractor and the Principal.

In the event the Contractor fails to comply with an obligation under this clause, the Principal may, after giving reasonable notice in writing to the Contractor, have the subject work carried out by others and the reasonable cost of carrying out the work will be a debt due from the Contractor to the Principal.

10.3 Excepted Risks

The Excepted Risks causing loss or damage, for which the Principal is liable, are-

- (a) any negligent act or omission of the Principal or the employees, consultants or agents of the Principal (including the Independent Certifier);
- (b) any risk specifically excepted in the Contract;
- (c) acts of terrorism, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority;
- (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's Consultants or subcontractors or the employees or agents of any of these;
- (e) use or occupation by the Principal or its employees, agents consultants or other contractors (not being employed by the Contractor), of any part of the work under the Contract; and
- (f) Not used.

11. INDEMNITIES

11.1 Indemnity by Contractor

Insofar as this Clause 11.1 applies to property, it applies to property other than the work under the Contract. The Contractor shall indemnify the Principal against-

- (a) loss of or damage to property of the Principal, including existing property in or upon which the work under the Contract is being carried out; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any property,

arising out of or as a consequence of the carrying out by the Contractor of the work under the Contract, but the Contractor's liability to indemnify the Principal shall be reduced proportionally to the extent that any act or omission of the Principal, the Principal's Representative or the employees or agents of the Principal contributed to the loss, damage, death or injury.

11.2 Exclusions

The indemnity in Clause 11.1 shall not apply to-

- (a) the extent that the liability of the Contractor is limited by another provision of the Contract;
- (b) exclude any other right of the Principal to be indemnified by the Contractor;
- (c) things for the care of which the Contractor is responsible under Clause 10.1; and
- (d) claims in respect of the right of the Principal to have the work under the Contract carried out.

12. CONTRACTOR WARRANTIES

12.1 Contractor's Warranties

The Contractor warrants to the Principal that the Contractor-

- (a) at all times shall be suitably qualified and experienced, and shall exercise due skill, care and diligence in the execution and completion of all work under the Contract;
- (b) shall exercise due skill, care and diligence in the execution and completion of all design work under the Contract to the standard expected of a professional designer experienced in works of a similar nature to the work under the Contract;
- (c) shall execute and complete the Contractor's Design Obligations and produce the Design Documents to accord with the Principal's Project Requirements and accepted industry standards; and
- (d) shall execute and complete the work under the Contract in accordance with the Contract and the Design Documents so that the Works, when completed, shall-
 - (i) be fit for their stated purpose; and
 - (ii) comply with all the requirements of the Contract, including all Legislative Requirements.

12.2 Warranties Unaffected

The Contractor acknowledges that the warranties in Clause 12.1 and the Contractor's Design Obligations shall remain unaffected notwithstanding-

- (a) that design work has been carried out by or on behalf of the Principal and included in the Principal's Project Requirements;
- (b) any receipt or review of, or comment or direction on, the Design Documents by the Principal's Representative or the Principal; and
- (c) any Variation directed in accordance with this Contract.

13. INSURANCE - WORK UNDER THE CONTRACT

13.1 Nature of Insurance

Before the Contractor commences work under the Contract, the Contractor shall effect an insurance policy covering all the things referred to in Clause 10.1 against loss or damage until the Contractor ceases to be responsible for their care. Without limiting the generality of the obligation to insure, the policy shall cover the Contractor's liabilities under Clause 10.2 and things in storage off Site and in transit to the Site.

The insurance cover under this Clause 13 may exclude-

- (a) the cost of making good fair wear and tear or gradual deterioration but shall not exclude the loss or damage resulting there from;
- (b) the cost of making good faulty design, workmanship and materials but shall not exclude the loss or damage resulting therefrom;
- (c) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
- (d) damages for delay in completing or for the failure to complete the Works;
- (e) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and
- (f) loss or damage resulting from the Excepted Risks referred to in Clause 10.3(b) and (c).

13.2 Amount Insured

The insurance cover shall be for an amount not less than the sum of-

- (a) the full reinstatement and replacement cost;
- (b) the amount stated in item 3.1(a) of Annexure Part A to provide for costs of demolition and removal of debris;
- (c) the amount stated in item 3.1(b) of Annexure Part A to cover fees of the consultants;
- (d) the value stated in item 3.1(c) of Annexure Part A of any materials or things to be supplied by the Principal for the purposes of the work under the Contract; and
- (e) the additional amount or percentage stated in item 3.1(d) of Annexure Part A of the total of the items referred to in Clause 13(a) to (d).

13.3 Parties Covered

The insurance policy shall be in the name of the Contractor, and shall cover the Principal, the Contractor and all Consultants, and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights, interests and liabilities.

The policy shall be maintained until the Contractor ceases to be responsible under Clause 10.1 for the care of anything.

14. INSURANCE - PUBLIC LIABILITY

Before the Contractor commences work under the Contract, the Contractor shall effect a public liability policy of insurance in the name of the Contractor which covers the Principal, the Contractor, the Principal's Representative, Independent Certifier, all Consultants and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests and covers their liabilities to third parties. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 13) and the death of or injury to any person (other than liability which is required by law to be insured under a workers' compensation policy of insurance).

The public liability policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in item 3.2 of Annexure Part A and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Final Completion Certificate is issued pursuant to the Contract.

15. INSURANCE – WORKERS COMPENSATION

Before commencing work under the Contract the Contractor shall insure against liability for death of or injury to persons employed by the Contractor including liability by statute and at common law. The insurance cover shall be maintained until all work including remedial work is completed.

Where permitted by law the insurance policy or policies shall be extended to indemnify the Principal for the Principal's statutory liability to persons employed by the Contractor.

The Contractor shall ensure that all Consultants and all Subcontractors have similarly insured their employees.

16. INSURANCE - PROFESSIONAL INDEMNITY

Before the Contractor commences work under the Contract, the Contractor shall effect a professional indemnity insurance policy with a total aggregate cover of not less than the sum stated in item 3.3 of Annexure Part A.

The policy and such level of cover shall be maintained until the Final Completion Certificate is issued pursuant to Clause 43 and thereafter for a period as is stated in item 3.3 of Annexure Part A.

The Contractor shall ensure that every Consultant, if within a category stated in item 3.4 of Annexure Part A, is insured for professional indemnity with a cover not less than the sum stated in item 3.4 of Annexure Part A.

Each Consultant's policy shall be maintained until the Final Completion Certificate is issued pursuant to Clause 43 and thereafter for a period as is stated in item 3.4 of Annexure Part A.

17. INSPECTION AND PROVISIONS OF INSURANCE POLICIES

17.1 Proof of Insurance

Before the Contractor commences work under the Contract and whenever requested in writing by the Principal, the Contractor shall produce certificates of currency as evidence to the satisfaction and approval of the Principal of the insurance effected and maintained.

The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of the Contract.

17.2 Failure to Produce Proof of Insurance

If after being requested in writing by the Principal to do so, the Contractor fails to produce evidence of compliance with insurance obligations under Clause 13, 14, 15 or 16 to the satisfaction and approval of the Principal, the Principal may effect and maintain the insurance and pay the premiums. The amount paid shall be a debt due from the Contractor to the Principal. The Principal may refuse payment until evidence of compliance with insurance obligations under Clauses 13, 14, 15 and 16 is produced by the Contractor to the satisfaction and approval of the Principal. The rights given by this Clause 17.2 are in addition to any other right.

17.3 Notices from or to the Insurer

In relation to the insurance to be effected under Clause 13 or 14 the Contractor shall ensure that it shall notify the Principal of any notice of cancellation or other material notice received from the insurer.

17.4 Notices of Potential Claims

The Contractor shall, as soon as practicable, inform the Principal in writing of any occurrence that may give rise to a claim under a policy of insurance required by Clause 13 or 14 and shall keep the Principal informed of subsequent developments concerning the claim, except where such notice may prejudice a claim with insurers. The Contractor shall ensure that subcontractors in respect of their operations similarly inform the Contractor.

17.5 Settlement of Claims

Upon settlement of a claim under the insurance required by Clause 13 -

- (a) to the extent that the work under the Contract needing reinstatement has been the subject of a payment or allowance by the Principal to the Contractor, if the Contractor has not completed reinstatement of that work, moneys received shall, if requested by either party, be paid into a bank agreed upon by the parties in an account in the joint names of the Contractor and the Principal. As

the Contractor proceeds to reinstate the loss or damage, the Principal's Representative shall certify against the joint account for the cost of reinstatement; and

- (b) to the extent that the work to be reinstated has not been the subject of a payment or allowance by the Principal to the Contractor, the Contractor shall be entitled immediately to receive from moneys received, the amount of money so paid in relation to any loss suffered by the Contractor relating to that work under the Contract (including the supply of goods and materials on site whether or not incorporated into the Works).

17.6 Cross Liability

Any insurance required to be effected in accordance with the Contract by the Contractor in joint names or by the Principal, shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby).

17.7 Payment of excesses

Irrespective of which party effects the insurance policies referred to in Clauses 13, 14, 15 and 16, the Contractor must pay all excesses and deductibles payable for claims under each policy arising from the Contractor's liability or the liability of its employees, agents, subconsultants or subcontractors .

18. Not used

19. Not used

19A. PRINCIPAL'S REPRESENTATIVE

The Principal has appointed the person set out in item 1.8 of Annexure Part 8 to be its representative and to exercise any functions of the Principal under the Contract. The appointment of a Principal's Representative shall not prevent the Principal from exercising any function. The Principal may at any time and from time to time, replace the Principal's Representative by written notice to the Contractor.

20. CONTRACTOR'S REPRESENTATIVE AND KEY PERSONNEL

The Contractor shall personally superintend the execution of the work under the Contract and must at all times during which any activities relating to the execution of the work under the Contract are taking place, have a competent representative present on the Site and, if required by the Principal's Representative, at other places at which activities relating to the execution of the work under the Contract are taking place.

The Contractor has appointed the representative stated in item 1.3 of Annexure Part A to be the Contractor's Representative under this Contract. The Contractor shall notify the Principal's Representative in writing of any subsequent changes to its Contractor Representative.

A Principal's Representatives direction if it relates to the execution of work on the Site and is given to the Contractor's Representative on the Site shall be deemed to have been given to the Contractor.

Matters within the knowledge of the Contractor's Representative shall be deemed to be within the knowledge of the Contractor.

If the Principal's Representative makes a reasonable objection to the appointment of a representative, the Contractor shall terminate the appointment and appoint another representative.

The Contractor:

- (a) shall dedicate the Key Personnel to the work under the Contract; and
- (b) must not replace the Key Personnel without the consent of the Principal (which shall not be unreasonably withheld).

21. THE INDEPENDENT CERTIFIER

The Contractor acknowledges that the Principal has appointed the Independent Certifier on the terms of the Independent Certifier Deed.

The Principal shall ensure that at all times there is an Independent Certifier and shall use all reasonable endeavours to ensure that in the exercise of the functions of the Independent Certifier under the Contract, the Independent Certifier-

- (a) acts honestly and fairly;
- (b) acts within the time prescribed under the Contract or where no time is prescribed, within a reasonable time; and
- (c) arrives at a reasonable measure or value of work, quantities or time.

If pursuant to a provision of the Contract enabling the Independent Certifier to give directions, the Independent Certifier gives a direction, the Contractor shall comply with the direction.

Except where the Contract otherwise provides, a direction may be given orally but the Independent Certifier shall as soon as practicable confirm it in writing.

If the Contractor in writing requests the Independent Certifier to confirm an oral direction, the Contractor shall not be bound to comply with the direction until the Independent Certifier confirms it in writing.

The Independent Certifier shall have-

- (a) access to the Site and the work under the Contract; and
- (b) after reasonable notice to the Contractor, access to any place other than the Site where work under the Contract is being carried out or materials are being prepared or stored,

for the purposes of discharging the functions of the Independent Certifier under the Independent Certifier Deed.

22. PROJECT CONTROL GROUP

22.1 Establishment of PCG

As soon as practicable following the commencement of this Contract, the parties shall establish a PCG to enable the efficient flow of information between the parties, and to provide a forum for discussing and monitoring the progress and any issues arising out of the work under the Contract, from design development, safety and construction.

The PCG will comprise:

- (a) 2 members representing the Principal, including a senior executive who will act as Chairman and the Principal's Representative; and
- (b) 2 members representing the Contractor, including the Contractor's Representative

A quorum for a PCG meeting will be constituted by the attendance of at least one representative from each party.

The PCG will meet at least every 6 weeks, or as otherwise agreed.

22.2 PCG Reports

The Contractor shall prepare detailed reports for each PCG which will cover at least the following:

- (a) the development of and any proposed changes to the design;
- (b) Variations (if any);
- (c) progress of the Works;
- (d) cash flow forecasts in respect of progress payment amounts;
- (e) quality control;
- (f) details of insurance claims, and
- (g) details of any disputes in connection with any aspect of the Works.

The reports must be prepared in a format, and contain a level of detail, reasonably acceptable to the Principal.

The Contractor shall promptly deal with any reasonable request for additional information or reports made by the Principal.

In addition to item (d) listed above, the Contractor must also:

- (i) maintain a detailed record of the progressive cost of the Works incurred under the Contract;
- (ii) track the progressive cost against the forecast cost; and
- (iii) attend regular cost review meetings as requested by the Principal to review this record at any time.

22.3 General

The PCG is not authorised to approve any matter under this Contract which is required to be approved by the Principal or the Principal's Representative.

23. SUBCONTRACTING

23.1 No Assignment / Novation

The Contractor shall not, without the prior written approval of the Principal, assign or novate the Contract or any payment or any other right, benefit or interest thereunder.

23.2 Subcontracting

The Contractor may subcontract any part of the design and construction of the Works. The engagement of Subcontractors will not relieve the Contractor of its obligations under this Contract.

The Contractor shall ensure that all Subcontracts for the work under the Contract shall include-

- (a) provision that the Subcontractor shall not assign or subcontract without the consent in writing of the Contractor;
- (b) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal;
- (c) provision that if the Contract is terminated and upon the Subcontractor being paid the sum certified by the Independent Certifier as owing to the Subcontractor, the Contractor and the Subcontractor shall, after the Principal has done so, promptly execute a deed of novation in the form of Annexure Part L; and
- (d) where the Subcontractor is a Consultant, provision that the subcontractor shall effect and maintain professional indemnity insurance on the same terms as are required of the Contractor under Clause 16.

23.3 Contractor's Responsibility

Entry into a subcontract shall not relieve the Contractor from any liability or obligation under the Contract. Except where the Contract otherwise provides, the Contractor shall be liable to the Principal for the acts and omissions of Subcontractors, employees and agents of Subcontractors as if they were acts or omissions of the Contractor.

24. CONTROL OF CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS

The Principal's Representative may direct the Contractor to have removed from the Site or from any activity connected with the work under the Contract, within such time as the Principal's Representative directs, any person employed in connection with the work under the Contract who, in the reasonable opinion of the Principal's Representative, is guilty of misconduct or is incompetent or negligent. The person shall not thereafter be employed on the Site or on activities connected with the work under the Contract without the prior written approval of the Principal.

25. OCCUPATIONAL HEALTH AND SAFETY

25.1 Principal Contractor

The Principal appoints the Contractor as the principal contractor for the work under the Contract for the purposes of the OHS Regulation and authorises the Contractor to exercise such authority of the Principal as is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor under the OHS Regulation.

25.2 Contractor Responsibilities

The Contractor acknowledges and agrees that it:

- (a) is responsible for the work under the Contract at all times until the Date of Practical Completion and where work is carried out until the expiry of the last Defects Liability Period;
- (b) must ensure that the work under the Contract is carried out in accordance with the requirements of the OHS Regulation and the OHS Act and ensure that its employees and subcontractors and all other persons for whom it is responsible or over whom it is capable of exercising control while carrying out the Works comply with the requirements of the OHS Regulation and the OHS Act;
- (c) must ensure compliance with the provisions of the OHS Act, the OHS Regulation and all regulations, advisory standards and codes of practice made under the OHS Act, to ensure the safety of its employees, the subcontractors and the subcontractors' employees;
- (d) must ensure compliance with its duties as principal contractor under the OHS Act and the OHS Regulation, including completing all forms, paying all fees and charges and performing all legislative requirements;
- (e) do all that is required to be done to cause the Principal to satisfy their obligations under the OHS Act and the OHS Regulation;
- (f) notify the Principal promptly of:
 - (i) notices or correspondence of whatever nature concerning or issued under the OHS Act or the OHS Regulation;
 - (ii) all accidents on site involving death or injury of any person; and
 - (iii) all accidents involving loss of time or incidents with accident potential on site such as equipment failure and the like;
- (g) give the Principal such information as may be required in relation to such accidents and, if required, shall furnish a written report in the form directed by the Principal;
- (h) give the Principal a written report that specifies the hazards associated with the design of the work under the Contract that create a risk to the health and safety of persons who are to carry out the work under this Contract ("**Safety Design Report**");
- (i) ensure, so far as is reasonably practicable, that any other person who is a designer (as defined in the OHS Regulation) of the work under the Contract, gives to the Principal a Safety Design Report and otherwise comply with all the obligations of a designer under the OHS Act;
- (j) manage hazards and risks which have been identified in any Safety Design Report(s) that specify the hazards associated with the design of the work under the Contract or any part of the work under the Contract;
- (k) so far as is reasonably practicable, consult, co-operate and co-ordinate activities with all other persons that have a duty with respect to the same matter under the OHS Act or OHS Regulations;
- (l) prior to carrying out any work for which a licence is required under the OHS Legislation, provide a copy of the relevant licence to the Principal;
- (m) comply with any reasonable direction of the Principal given following a perceived breach of this clause;
- (n) maintain appropriate safety precautions and programs, so as to prevent injury to persons or damage to property on, about or adjacent to the Site and the Works so far as is reasonably practicable;
- (o) implement and comply with all necessary security requirements of the Principal for the Site;
- (p) ensure all Works are carried out in a safe manner, including:
 - (i) erecting and maintaining, as required by existing conditions and the progress of the Works, all safeguards necessary for safety and protection (including barriers, fences and railings); and
 - (ii) posting danger signs and other warnings against hazards and notifying the Principal and other users of any dangerous or hazardous conditions arising out of the performance of the Works;

- (q) have on the Site at all times appropriate first aid facilities and a member of its staff fully qualified and experienced in occupational health and safety and familiar with OHS Legislation;
- (r) must ensure that all constructional plant is maintained in a safe working order; and
- (s) must comply with any reasonable direction of the Principal to:
 - (i) stop using the constructional plant, until it has been brought into a safe working order; or
 - (ii) replace the constructional plant with constructional plant, which is in a safe working order; and
- (t) must take all measures reasonably necessary to protect people and property on or adjacent to the Site and Works; and
- (u) must:
 - (i) co-operate with any Workcover NSW WH&S management system audit process; and
 - (ii) provide access to the Principal to attend the offices of the Contractor to inspect a copy of any Workcover NSW WH&S audit report within 5 Business Days of any such audit report being provided to the Contractor.

If the Contractor fails to comply with an obligation under this clause 25, the Principal may perform, or have performed, the obligation on the Contractor's behalf and recover the costs and expenses incurred as a debt due from the Contractor to the Principal.

25.3 OH&S Plan

In addition to its duties as principal contractor, the Contractor must:

- (a) 30 Business Days prior to commencement of the Works prepare the OH&S Plan (relevant to the Works) and submit that plan to the Principal for its approval;
- (b) maintain the OH&S Plan in accordance with the OH&S Regulation to the extent applicable;
- (c) promptly provide any updated OH&S Plan to the Principal;
- (d) comply with the NSW Government "Occupational Health and Safety Management Systems Guidelines";
- (e) comply with any reasonable direction of the Principal given following a perceived breach of the OH&S Regulation or the OH&S Plan; and
- (f) take all measures required under any Legislative Requirement or by any relevant Government Agency to protect people and property on or adjacent to the Site and the Works in connection with the execution of the work under the Contract.

25.4 Failure to comply

If the Contractor fails to comply with its duties as principal contractor, the Principal may have the Contractor's obligations carried out by itself or by others and the cost incurred by the Principal in having those obligations carried out will be a debt due from the Contractor to the Principal.

25.5 Indemnity

The Contractor indemnifies the Principal from and against any damage, expense, loss, liability or claim by or against the Principal arising out of or in connection with a breach by the Contractor of its obligations under and resulting from this clause 25.

25.6 Lendlease GMRs

The Contractor is committed to eliminate injuries and incidents on Site through the application of the Lendlease GMRs.

The Contractor undertakes to ensure that the Lendlease GMRs will be applied as the minimum standards which the Contractor, its Consultants and Subcontractors must comply with on the Site during the carrying out of the Works.

25.7 Precedence

This Clause 25 overrides any other provision of the Contract to the extent of any inconsistency.

26. SITE

26.1 Access to the Site

The Principal must give the Contractor access to or possession of the Site sufficient to enable the Contractor to commence and carry out the Contractor's Design Obligations and work under the Contract.

If the Principal has not given the Contractor access to the whole Site, the Principal shall from time to time give the Contractor access to such further parts of the Site as may be necessary to enable the Contractor to execute the work under the Contract in accordance with the requirements of the Contract. The Principal shall notify the Contractor in writing of the date upon which the Site or any part thereof will be available.

Notwithstanding the provisions of this Clause 26.1, if the Contractor is in breach of Clause 17.1, the Principal may refuse to give the Contractor access to the Site or any part of the Site until the Contractor has complied with the requirements of Clause 17.1.

Access to the Site shall confer on the Contractor a right only to such use and control as is necessary to enable the Contractor to execute the work under the Contract.

26.2 Access for the Principal and Others

The Principal and the Principal's employees and agents and representatives and invitees of the Principal may at any time after reasonable notice to the Contractor, have access to any part of the Site or the Works for any relevant purpose.

The Contractor shall:

- (a) co-operate with the Principal and Government Agencies;
- (b) permit the execution of work on the Site by persons engaged by the Principal on the condition that such persons comply with any direction of the Contractor which is necessary or desirable for it to carry out its obligations under clause 25;
- (c) consult and cooperate with them and coordinate the Contractor's work with their work to minimise delays (to the extent reasonably practicable);
- (d) not unreasonably obstruct, delay or interfere with their work; and
- (e) comply with all reasonable written directions from the Principal's Representative regarding such persons and their work.

If requested by the Contractor, the Principal shall provide to the Contractor the names of the persons so engaged.

The Contractor shall at all reasonable times after reasonable notice give the Principal and other persons authorized in writing by the Principal or by the Principal's Representative access to the work under the Contract at any place where the work is being carried out or materials are being prepared or stored.

The Principal shall ensure that the Contractor is not delayed in the execution of the Contractor's work by the Principal's Representative whilst exercising the right of access given by Clause 26 or by any persons exercising the right of access given to those persons by this Clause 26.

26.3 Delivery of Materials to and Work on the Site Before Access

Until access to the Site or part of the Site is given to the Contractor under Clause 26.1, the Contractor shall not deliver materials to or perform work (except as permitted by Clause 26.1 for executing and completing the Contractor's Design Obligations) on the Site or part of the Site, as the case may be, unless approval in writing is given by the Principal's Representative.

26.4 Use of the Site by the Contractor

Unless the Principal's Representative gives prior written approval, the Contractor shall not use the Site or allow it to be used for-

- (a) washing, cleaning servicing trucks or other machinery;
- (b) camping;
- (c) residential purposes; or
- (d) any purpose not connected with the work under the Contract.

26.5 Finding of Relics

Any Relics found on, in or under the Site shall, as between the parties, be and remain the property of the Principal. Immediately upon the discovery of any Relic the Contractor shall, at its cost, take precautions and all practical steps to prevent their loss, removal or damage and shall notify the Independent Certifier of the discovery.

Upon the discovery of any Relic, the Contractor must promptly notify the Principal's Representative and the Independent Certifier and comply with all Legislative Requirements relating to the discovery of the Relic.

27. SETTING OUT THE WORKS

27.1 Setting Out

The Principal's Representative shall supply to the Contractor the information, data and survey marks necessary to enable the Contractor to set out the Works and the survey marks (if any) specified in the Contract. The Contractor shall set out the Works in accordance with the Contract and shall provide all instruments and things necessary for that purpose.

27.2 Care of Survey Marks

If a survey mark is disturbed or obliterated, the Contractor shall immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor shall reinstate the survey mark.

If the disturbance or obliteration is caused by the Principal's Representative or a person referred to in Clause 26.2, other than the Contractor, the cost incurred by the Contractor in reinstating the survey mark shall be valued under Clause 32.5.

27.3 Errors in Setting Out

If the Contractor discovers an error in the position, level, dimensions or alignment of any work under the Contract, the Contractor shall immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor shall, at its cost, rectify the error.

28. LATENT CONDITIONS

28.1 Definition

Latent Conditions are-

- (a) physical conditions on or under the Site or its surroundings, including artificial things (but excluding weather conditions), which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor at the date of the Contractor's Offer if the Contractor had-
 - (i) examined all information made available in writing by the Principal to the Contractor prior to the date of the Contractor's Offer;
 - (ii) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Contractor's Offer and obtainable by the making of reasonable enquiries; and
 - (iii) inspected the Site and its surroundings;
- (b) any Utility or Utility Infrastructure above, on or below the surface of the Site which differs in any material way (whether in location, extent, nature, condition, capacity or existence) to that identified on the Utilities Plan attached as Annexure Part M and which could not reasonably have been anticipated by the Contractor at the date of the Contractor's Offer;
- (c) material which, when excavated meets the classification under the NSW Waste Classification Guidelines (as at 27 May 2015 and not as amended from time to time) as anything other than General Solid Waste; or
- (d) any other conditions that renders the standard type smart pole and traffic light footing (1 off 600mm diameter pier 2.2m deep) unsuitable for the Works.

For the avoidance of doubt, what should reasonably be anticipated by the Contractor for the purposes of this clause 28.1(a), shall include all knowledge and information available to the Contractor under any other contract or arrangement in relation to Barangaroo.

28.2 Notification

If during the execution of the work under the Contract, the Contractor becomes aware of a Latent Condition, the Contractor shall forthwith and where possible before the Latent Condition is disturbed, give written notice thereof to the Independent Certifier and a copy of the notice to the Principal's Representative.

The Contractor shall in giving notice provide to the Independent Certifier a statement in writing specifying-

- (a) the Latent Condition encountered and in what respects it differs materially;
- (b) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Practical Completion;
- (d) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by the Independent Certifier or the Principal's Representative.

28.3 Extension of Time and Cost

Delay caused by a Latent Condition may, subject to clause 39, justify an extension of time under Clause 39.

If a Latent Condition causes the Contractor to –

- (a) carry out more work;
- (a) use more Constructional Plant; and
- (b) incur more cost (including but not limited to extra cost for delay or disruption),

than the Contractor could reasonably have anticipated at the date of the Contractor's Offer, and provided that the Contractor has complied with all of its obligations under clause 28.2, a valuation shall be made under Clause 32.5.

28.4 Time Bar

Where pursuant to Clause 28.3 a valuation is to be made under Clause 32.5, regard shall not be had to the value of more work carried out, more Constructional Plant used or more cost incurred earlier than 28 days before the date on which the Contractor gives the written notice required by the first paragraph of Clause 28.2.

29. MATERIALS, LABOUR AND CONSTRUCTIONAL PLANT

29.1 Provision of Materials, Labour and Constructional Plant

Except to the extent that the Contract otherwise provides, the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities under the Contract.

29.2 Removal of Materials and Constructional Plant

From time to time the Principal's Representative may, by written notice to the Contractor, direct the Contractor not to remove from the Site, materials or Constructional Plant. Thereafter, the Contractor shall not remove the materials or the Constructional Plant without the prior written approval of the Principal's Representative, which approval shall not be unreasonably withheld.

29.3 Manufacture and Supply of Materials

The Principal's Representative may direct the Contractor to supply particulars of-

- (a) the mode and place of manufacture;
- (b) the source of supply;
- (c) the performance capacities; and

(d) other information,

in respect of any materials, machinery or equipment to be supplied by the Contractor under or used in connection with the Contract.

30. QUALITY ASSURANCE AND DEFECTIVE WORK

30.1 Quality of Material and Work

The Contractor shall use the materials and standards of workmanship required by the Contract. In the absence of any requirement to the contrary, the Contractor shall use suitable new materials of high quality, comply with Australian Standards and which are fit for their intended purpose and proper and tradesmanlike workmanship.

30.2 Quality Assurance

The Contractor shall -

- (a) plan, establish and maintain a quality system which conforms to ISO 9000 Series Standards;
- (b) provide the Principal's Representative and the Independent Certifier with access to the quality system of each of the Contractor and subcontractors to enable monitoring and quality auditing;
- (c) if requested by the Principal, provide evidence of the Contractor's compliance with the quality system;
- (d) permit the Principal and the Independent Certifier to inspect any records relating to the Contractor's quality assurance system; and
- (e) ensure that all major Subcontractors engaged in relation to the work under the Contract also have certified quality assurance systems and have achieved substantial implementation of a quality assurance system conforming to the AS 9000 Series Standards.

Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not relieve the Contractor of the responsibility to comply with the Contract.

30.3 Defective Material or Work

If the Principal or Independent Certifier discovers material or work provided by the Contractor which is not in accordance with the Contract, the Principal's Representative or Independent Certifier shall as soon as practicable notify the Contractor. The Independent Certifier may direct the Contractor-

- (a) to remove the material from the Site;
- (b) to demolish the work;
- (c) to redesign, reconstruct, replace or correct the material or work; or
- (d) not to deliver the material or work to the Site.

The Principal's Representative may direct the times within which the Contractor must commence and complete the removal, demolition, redesign, reconstruction, replacement or correction.

If the Contractor fails to comply with any other direction issued by the Independent Certifier pursuant to this Clause 30.3 within the time specified by the Independent Certifier in the direction, provided the Independent Certifier has given the Contractor notice in writing that after the expiry of 8 days from the date on which the Contractor receives the notice the Principal intends to have the work of removal, demolition, redesign, reconstruction, replacement or correction carried out by other persons), the Principal may have that work carried out by other persons and that cost incurred by the Principal shall be a debt due from the Contractor to the Principal.

30.4 Variations due to Defective Material or Work

Instead of a direction pursuant to Clause 30.3, the Independent Certifier may direct a Variation under Clause 32. The Variation shall be valued under Clause 32.5 and-

- (a) if the Variation causes an increase or decrease in the value to the Principal of the Works, regard shall also be had to the increase or decrease; and
- (b) if the Variation results in the Contractor incurring more or less cost than would reasonably have been incurred had the Contractor been given a direction pursuant to Clause 30.3, regard shall also be had to the difference.

30.5 Generally

If the Independent Certifier gives a direction pursuant to Clause 30.3, 30.4 or 30.5, the direction shall be given as soon as practicable after the Independent Certifier becomes aware that material or work is not in accordance with the Contract. The Independent Certifier may give such a direction at any time before the issue of the Final Completion Certificate under Clause 43.2.

Except to the extent that to do so would be inconsistent with a direction pursuant to Clause 30.4 or 30.5 and notwithstanding that the Independent Certifier has not given a direction pursuant to Clause 30.3, the Contractor shall promptly remove, demolish, redesign, reconstruct, replace or correct material or work that is not in accordance with the Contract.

A progress payment, or a test or a failure by the Independent Certifier, the Principal's Representative or anyone else to disapprove any material or work, shall not prejudice the power of the Independent Certifier to subsequently give a direction pursuant to Clause 30.3, 30.4 or 30.5.

Nothing in Clause 30 shall prejudice any other right which the Principal may have against the Contractor arising out of the failure of the Contractor to provide material or work in accordance with the Contract.

The Independent Certifier shall not be obliged to give a direction pursuant to Clause 30.4 or 30.5 to assist the Contractor.

31. EXAMINATION AND TESTING

31.1 Principal's Representative May Order Tests

At any time before the expiry of the last Defects Liability Period the Principal's Representative may direct that any material or work under the Contract be tested. The Contractor shall provide such assistance and samples and make accessible such parts of the work under the Contract as may be required by the Principal's Representative. On completion of the tests, the Contractor shall promptly make good the work tested so that it fully complies with the Contract.

31.2 Covering Up of Work

The Principal's Representative may direct that any part of the work under the Contract shall not be covered up or made inaccessible without the Principal's Representative's prior approval.

31.3 Who Conducts Tests

Tests shall be conducted as provided in the Contract or by the Principal's Representative or a person (which may include the Contractor) nominated by the Principal's Representative.

31.4 Notice of Tests

Before conducting a test under the Contract, the party conducting the test, being the Principal's Representative or the Contractor, shall give reasonable notice in writing to the other of the time, date and place of the test. If the other does not then attend, the test may nevertheless proceed.

31.4 Procedure if Tests Delayed

Without prejudice to any other right, if the Principal's Representative or the Contractor delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

31.5 Results of Tests

Results of tests shall be promptly made available by each party to the other and to the Independent Certifier.

31.6 Costs of Testing

Costs of and incidental to testing shall be valued under Clause 32.5 in accordance with this clause.

Such costs shall be borne by the Principal or paid by the Principal to the Contractor unless-

- (a) the Contract provides that the Contractor shall bear the costs, or the test is one which the Contractor was required to conduct other than a test directed pursuant to Clause 31.1;
- (b) the test shows that the material or work is not in accordance with the Contract;
- (c) the test is in respect of work under the Contract covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of the Contract.

Where such costs are not to be borne by the Principal, they shall be borne by the Contractor or paid by the Contractor to the Principal in accordance with clause 46.

31.7 Access for Testing

If before the issue of the Final Completion Certificate-

- (a) the Principal, the Principal's Representative or the Independent Certifier asserts that material or work is not in accordance with the Contract; and
- (b) the Contractor requests permission to test the material or work,

the Principal shall not unreasonably refuse the Contractor access to test the material or work.

32. VARIATIONS

32.1 Variations to the Work under the Contract

The parties acknowledge and agree that where the Principal's Representative makes any direction or gives any notice under Clause 32.3, it does so on behalf of and as agent for the Principal.

The Principal may direct the Contractor, by notice in writing (including during a PCG meeting), to do any one or more of the following -

- (a) increase, decrease or omit any part of the work under the Contract;
- (b) change the character or quality of any material or work or of anything described in the Principal's Project Requirements or the Design Documents;
- (c) change the levels, lines, positions or dimensions of anything described in the Principal's Project Requirements, the Design Documents or any part of the work under the Contract;
- (d) execute additional work;
- (e) demolish or remove material or work no longer required by the Principal; or
- (f) Not used

The price for such directed Variation will be valued under Clause 32.5.

Any extension of time claims for Variations directed under this clause 32.1 must be made in accordance with clause 39.

The Contractor shall not vary the work under the Contract except as directed by the Principal or approved in writing by the Principal pursuant to Clause 32. The approval or direction must be issued from or signed by the Principal. For the avoidance of doubt, no such approval or direction may be given orally in design workshops, meetings or presentations, whether that purported oral approval or direction is given by the Principal or any other person. Except where otherwise provided in the Contract, the Principal shall not direct a Variation after the Date of Practical Completion.

The Contractor agrees that the Principal may omit any part of the work under the Contract with a view to retaining a third party to carry out that work.

32.2 Proposed Variations

The Principal may give the Contractor written notice of a proposed Variation.

Upon receipt of a notice in writing from the Principal notifying the Contractor of a proposed Variation under Clause 32, the Contractor shall, as soon as practicable and in any event within 15 Business Days of receipt of such notice, notify the Principal in writing whether the proposed Variation can be effected, together with (if the Variation can be effected), a detailed written quotation for the proposed Variation which:

- (a) states the scope of the proposed Variation;
- (b) states whether a variation to any permit will be required;
- (c) if the Variation will result in any delays, states the effect which the Contractor anticipates that the Variation will have on the latest approved Contractor's Program and time for Practical Completion including:
 - (i) providing details evidencing the activities on the critical path of the latest approved Contractor's Program which are or will be delayed (including providing a copy of the latest approved Contractor's Program revised to demonstrate the effect on the critical path);

- (ii) setting out the extension of time claimed and how it impacts the critical path on the latest approved Contractor's Program; and
 - (iii) details of the action the Contractor proposes to take to reduce the effects of and mitigate any delay; and
- (d) states the costs (including delay or disruption costs, if any, and the cost or effect on any applicable warranty) of the proposed Variation; and
- (e) states the effect it will have on the Contract Sum.

If the Contractor is not able to provide all such information within 15 Business Days receipt of a proposed Variation notice, it must as soon as practicable (and in any event within 15 Business Days of receipt of such proposed Variation notice) provide to the Principal all information that it is able to provide, together with a written notice which details the information that it has not been able to provide and a date by when it will be able to provide all such information (such date must be within a reasonable period of time from the date of receipt of such proposed Variation notice).

The Contractor must, promptly and in any event by the date specified in its notice, provide all such required information to the Principal so that the Principal has, by such date, received a valid detailed written quotation for the proposed Variation, as required by clause 32.2.

The Principal will direct the Contractor whether or not to proceed with the Variation within a reasonable time of receipt of the Contractor's valid quotation under clause 32.2.

32.3 Pricing the Variation

Unless the Principal and the Contractor agree upon the price for a Variation, the Variation requested by the Principal pursuant to Clause 32.2 shall be valued under Clause 32.5 by the Independent Certifier.

The Principal's Representative may direct the Contractor to provide a detailed quotation for the work of a Variation supported by measurements or other evidence of cost.

32.4 Variations for the Convenience of the Contractor

If the Contractor wishes to request a Variation for the convenience of the Contractor, the Contractor must give a notice to the Principal's Representative that:

- (a) describes the scope of the Variation;
- (b) states why the Contractor wishes to make the Variation;
- (c) states the practical effect the Variation will have on the Works;
- (d) states whether a Variation to any permit will be required;
- (e) if the Variation will result in any delays, states the effect which the Variation will reasonably have on the latest approved Contractor's Program and time for Practical Completion; and
- (f) states the additional costs or cost savings of the Variation and the effect it will have on the Contract Sum (including each component).

The Principal's consent must be in writing and may be conditional.

Notwithstanding the notice the Contractor is required to provide under this Clause 32.4, unless the Principal otherwise directs in the consent approving the Variation, the Contractor shall not be entitled to -

- (i) an extension of time for Practical Completion; or
- (ii) extra payment,

in respect of the Variation or anything arising out of the Variation which would not have arisen had the Variation not been approved.

The Principal shall not be obliged to approve a Variation for the convenience of the Contractor.

32.4A Directions which Constitute Variations

If at any time the Principal gives the Contractor any direction or approval (written or otherwise) which the Contractor reasonably considers constitutes or involves a Variation to the work under the Contract (other

than a direction or approval which the Principal has expressly acknowledged in writing constitutes or involves a Variation), the Contractor must:

- (a) within 10 Business Days of such direction or approval (and before proceeding with the direction or approval):
 - (i) notify the Principal of the fact that the direction or approval constitutes or involves a Variation of the work under the Contract; and
 - (ii) advise the Principal in writing of:
 - (A) the effect which the Contractor anticipates that the Variation will have on the program and time for Practical Completion; and
 - (B) an estimate of the cost increase or decrease (including delay costs, if any) arising from the Variation and the effect it will have on the Contract Sum (including each component); and
- (b) not proceed to comply with the direction or approval until it has received written approval or direction following provision of the items in paragraph (a) from the Principal, in writing. For the avoidance of doubt, no such further approval may be given orally in design workshops, meetings or presentations, whether that purported oral approval is given by the Principal or any other person.

The price for a Variation directed or approved by the Principal under Clause 32.4A shall be valued under Clause 32.5.

32.4B Principal's Scope directed as a Variation

The Principal acknowledges and agrees that the Principal's Scope must be directed by way of Variation in order for the Contractor to complete the WUC.

The Contractor must give the Principal a written notice that sets out:

- (a) a full description of the Principals' Scope Variation;
- (b) the proposed increase or decrease in the Contract Sum to carry out the Principal's Scope Variation, including details of how such amounts have been calculated;

The Contractor must promptly provide any further information reasonably requested by the Principal.

Upon receipt of the Contractor's notice under this clause 32.4B, the Principal must direct by way of Variation the Principal's Scope Variation by giving written notice to the Contractor by the Direction Date.

The price for a Principal's Scope Variation directed by the Principal under Clause 32.4B shall be valued under Clause 32.5.

Where the Principal directs a Principal's Scope Variation the Contractor, in respect of that Principal's Scope Variation:

- (a) must perform that Principal's Scope Variation with due expedition and without delay; and
- (b) despite clause 32.5, shall not be entitled to an extension of time in respect of that Principal's Scope Variation except to the extent:
 - (i) the Principal directs the Contractor to proceed with that Principal's Scope Variation after the relevant Direction Date; or
 - (ii) a *delay event* in clause 39.2 (excluding clause 39.2(f)) applies.

32.5 Valuation

Where the Contract provides that a valuation shall be made under this Clause 32.5, the Independent Certifier will value the Variation-

- (a) in accordance with the principles stated in Annexure Part F for Variations; and
- (b) if the valuation is of an increase or decrease in a fee or charge or is a new fee or charge under Clause 7.3, the value shall be the actual increase or decrease or the actual amount of the new fee or charge without regard to overheads or profit.

The Parties agree that:

- (a) payments for valuations must be made strictly in accordance with clause 46; and
- (b) any extension of time claims for Variations must be made in accordance with clause 39.

Where a valuation is made under this clause 32.5 it shall be added to or deducted from the Contract Sum.

33. PROVISIONAL SUMS

The provisional sum items which are included in the Contract Sum are set out in Annexure Part D and shall not itself be payable by the Principal. But where at the direction of the Principal's Representative the work or item to which the provisional sum relates is performed or supplied by the Contractor, the work or item shall be deemed a Variation and shall be valued under Clause 32.5 and the difference shall be added to or deducted from the Contract Sum.

34. NOT USED

35. WORKING HOURS

The working hours and working days for work on the Site shall be as stated in the Development Conditions and shall not be varied without the prior approval of the Principal's Representative except when, in the interests of safety of the work under the Contract or to protect life or property, the Contractor finds it necessary to carry out work outside the working hours or on other than the working days stated in the Contract. In such cases the Contractor shall notify the Principal's Representative in writing of the circumstances as early as possible.

All costs attributable to the contract administration by or on behalf of the Principal of work during times approved pursuant to the previous paragraph shall be borne by the Principal.

36. PROGRESS AND PROGRAMMING OF THE WORKS

36.1 Rate of Progress

The Contractor shall proceed with the work under the Contract with due expedition and without delay.

The Contractor must not suspend the progress of the whole or any part of the work under the Contract except where the suspension is pursuant to Clause 54.3 or is directed or approved by the Principal's Representative pursuant to Clause 37.

The Contractor shall give the Principal's Representative reasonable advance notice of when the Contractor requires any other information, materials, documents or instructions from the Principal's Representative or the Principal.

The Principal and the Principal's Representative shall not be obliged to furnish any other information, materials, documents or instructions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of the Contract.

The Principal's Representative may direct in what order and at what time the various stages or parts of the work under the Contract shall be performed. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall notify the Principal's Representative in writing, giving reasons.

If compliance with the direction causes the Contractor to incur more or less cost than otherwise would have been incurred had the Contractor not been given the direction, the difference shall be valued under Clause 32.5.

36.2 Contractor's Program

Approval by the Principal of the Contractor's Program shall not affect its rights or obligations in Clause 36.1.

The Contractor shall not depart, without reasonable cause, from-

- (a) the Contractor's Program included in the Contract; or
- (b) any revised Contractor's Program approved by the Principal from time to time.

The Contractor must provide a revised Contractor's Program to the Principal and Independent Certifier:

- (a) showing statuses of each activity in the Contractor's Program, on a monthly basis during the term; and
- (b) any other time (or periods) specified by the Contract.

Each revised Contractor's Program submitted must first be approved in writing by the Principal before it will be considered to be the Contractor's Program for the purposes of the Contract.

The furnishing of a revised Contractor's Program shall not relieve the Contractor of any obligations under the Contract including the obligation not to depart, without reasonable cause, from an earlier approved Contractor's Program.

37. SUSPENSION OF THE WORKS

37.1 Suspension by the Principal's Representative

If the Principal's Representative considers that the suspension of the whole or part of the work under the Contract is necessary-

- (a) because of an act or omission of-
 - (i) the Principal, or their respective employees, consultants, other contractors or agents (not being employed by the Contractor); or
 - (ii) the Contractor, a Consultant, a Subcontractor or an employee or agent of any of them;
- (b) for the protection or safety of any person or property; or
- (c) to comply with an order of a court,

the Principal's Representative shall direct the Contractor to suspend the progress of the whole or part of the work under the Contract for such time as the Principal's Representative thinks fit.

37.2 Suspension by the Contractor

Subject to full extent permissible under the provisions of the *Building & Construction Industry Security of Payments Act 1999 (NSW)*, if the Contractor wishes to suspend the whole or part of the work under the Contract, otherwise than under Clause 54.3, the Contractor must first obtain the prior written approval of the Principal's Representative. The Principal's Representative may approve of the suspension and may impose conditions of approval.

37.3 Preservation of Work

If the Contractor ceases or suspends the whole or part of the work under the Contract, the Contractor must immediately upon a request for the Principal:

- (a) protect and secure the Site against weather and trespassers;
- (b) treat, seal and cover all surfaces of the Site to prevent deterioration; and
- (c) make all Works safe.

If the Contractor fails to comply with this Clause 37.3 within 5 days of a request by the Principal, the Principal may carry out these works and the reasonable cost incurred by the Principal in having the works so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal.

37.4 Recommencement of Work

As soon as the Principal's Representative becomes aware that the reason for any suspension no longer exists, the Principal's Representative shall direct the Contractor to recommence work as soon as reasonably practicable on the whole or on the relevant part of the work under the Contract.

If work is suspended pursuant to Clause 37.2 or 54.3, the Contractor may recommence work at any time after reasonable advance notice to the Principal's Representative.

37.5 Cost of Suspension

Any cost incurred by the Contractor by reason of a suspension pursuant to Clause 37.1 or 37.2 shall be borne by the Contractor but if the suspension is pursuant to:

- (a) clause 37.1(a)(i);
- (b) clause 37.1(b) or 37.1(c), except where the suspension is due to an unlawful act or omission of the Contractor or its employees, agents, subconsultants or subcontractors; or
- (c) clause 37.7,

and the suspension causes the Contractor to incur more or less cost than otherwise would have been incurred but for the suspension, the difference shall be valued under Clause 32.5. The Contractor must take all reasonable steps to mitigate the costs of a suspension.

37.6 Effect of Suspension

Suspension shall not affect the Date for Practical Completion but the cause of suspension may be a ground for extension of time under Clause 39.2.

37.7 Suspension at the convenience of the Principal

The Principal may at its convenience, by written notice, instruct the Contractor to suspend the whole or part of the work under the Contract.

38. TIMES FOR COMMENCEMENT AND COMPLETION

38.1 Date for Commencement

The Contractor shall promptly commence the work under the Contract no later than the Date for Commencement specified in item 4.1 of Annexure Part A.

8.2 Date for Practical Completion

The Contractor shall execute the work under the Contract to achieve Practical Completion by the Date for Practical Completion.

Upon the Date of Practical Completion the Contractor shall give possession of the Site and the Works to the Principal.

38.3 Separable Portions

The Principal may at any time direct (in writing) that any part or parts of the Works be carried out and completed in Separable Portions.

The interpretations of-

- (a) Date for Practical Completion;
- (b) Date of Practical Completion; and
- (c) Practical Completion,

and Clauses 5, 10, 16, 39, 40, 41, 42 and 43 shall apply separately to each Separable Portion and references therein to the Works and to work under the Contract shall mean so much of the Works and the work under the Contract as is comprised in the relevant Separable Portion.

If the Contract does not make provision for the amount of security, retention moneys, liquidated damages or bonus applicable to a Separable Portion, the respective amounts applicable shall be such proportion of the security, retention moneys, liquidated damages or bonus applicable to the whole of the work under the Contract as the value of the Works of the Separable Portion bears to the value of the Works of the whole of the work under the Contract.

38.4 Use of Partly Completed Works

If a part of the Works has reached a stage equivalent to that of Practical Completion but another part of the Works has not reached such a stage, the Principal may determine that the respective parts shall be Separable Portions.

In using a Separable Portion that has reached Practical Completion, the Principal shall not hinder the Contractor in the performance of the work under the Contract.

39. DELAY – EXTENSIONS OF TIME

39.1 Delay Notices

If the Contractor considers that it has been or is likely to be delayed in performing the work under the Contract (or where an event occurs which will or may impact on the critical path for the carrying out and completion of the Works as set out in the latest approved Contractor's Program), the Contractor shall promptly (and in any event within 10 Business Days of becoming aware of the delay or of the occurrence of the delay as applicable) notify the Principal's Representative and Independent Certifier in writing with

details of the delay, the possible effect on the critical path, the likely length of the delay and how it impacts the critical path shown on the latest approved Contractor's Program.

In such delay notice, the Contractor must also state what action it proposes to take to reduce the effects of and mitigate any delay (including reprogramming or alteration of sequence of activities or other methods to be employed to avoid the delay).

When it becomes evident to the Principal that anything which the Principal is obliged to do or provide under the Contract may be delayed, the Principal shall promptly give notice to Contractor in writing of the extent of the likely delay.

39.2 Delay Events

Subject to clauses 39.2A, 39.3 and 39.4, where the Contractor is or will be delayed in reaching Practical Completion by an event described below (**delay event**), the Contractor shall be entitled to an extension of time for Practical Completion:

- (a) an act or omission of the Principal (including breach), Independent Certifier, or an employee, consultant, other contractor or agent of the Principal or Independent Certifier;
- (b) Not used;
- (c) Not used;
- (d) a Force Majeure Event;
- (e) a Latent Condition;
- (f) a Variation;
- (g) a change in Legislative Requirements pursuant to Clause 7.3;
- (h) discovery of Relics;
- (i) delay by a Government Agency in connection with the Site, not caused by the Contractor and in respect of which delay the Contractor has taken all reasonable steps to avoid or minimise;
- (j) a claim referred to in Clause 10.3;
- (k) suspension pursuant to:
 - 1. Clauses 37.1(a)(i), 37.7 or 54.3; or
 - 2. to the extent not caused by the Contractor, Clauses 37.1(b) or 37.1(c)
- (l) unlawful actions of neighbours adjoining the Site or community groups which prevent the Contractor from carrying out work under the Contract in accordance with the Contract, unless they result from the Contractor not carrying out the Works in accordance with the approved hours of work, not conducting work in a professional manner or not complying with the conditions of any Legislative Requirements;
- (m) in respect of Utilities or Utility Infrastructure above, on or below the Site, any:
 - 1. requirements or conditions of approval of or directions by Utility providers or Utility Owners including compliance with their procedures and conditions of engagement to the extent not agreed by the Contractor at the time of the Contractor's Offer; or
 - 2. failure of or delay by a Utility provider or Utility Owner to carry out works or provide its consent to or approval of the carrying out of the work under the Contract,
 not caused by the Contractor and in respect of which delay the Contractor has taken all reasonable steps to avoid or minimise; or
- (n) not used.

39.2A Claim for an Extension of Time

The Contractor must submit a written claim for an extension of time under this clause within 20 Business Days of the date the Contractor first became aware, or should reasonably have been aware, of the delay event. Such claim must:

- (a) provide details evidencing the facts of the delay event and cause(s) of the delay;
- (b) provide details evidencing the activities on the critical path of the latest approved Contractor's Program which are or will be delayed (including providing a copy of the latest approved Contractor's Program revised to demonstrate the effect on the critical path);

- (c) set out the extension of time claimed and how it impacts the critical path on the latest approved Contractor's Program; and
- (d) include details of the action it proposes to take to reduce the effects of and mitigate any delay.

The Independent Certifier must not grant an extension of time until the Contractor has complied with its obligations under this clause 39.2A.

39.3 Concurrent and Contractor caused Delays

Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not a cause of delay listed in Clause 39.2, then to the extent that the delays are concurrent, the Contractor shall not be entitled to an extension of time for Practical Completion.

Notwithstanding the preceding paragraph (but subject to the following paragraph) the Contractor shall be entitled to an extension of time to the extent the delays are concurrent, if the concurrent delay occurs before, on or after the Date for Practical Completion and one of the causes of the concurrent delay is an event listed in Clauses 39.2(a), (d), (j), (k), and (m).

The Contractor is not entitled to an extension of time with respect to any delay caused by the Contractor under this Contract or in its capacity as the 'contractor' under a Related Works Contract.

39.4 Entitlement to an Extension of Time

In determining whether the Contractor is or will be delayed in reaching Practical Completion regard shall not be had to -

- (a) whether the Contractor can reach Practical Completion by the Date for Practical Completion without an extension of time; or
- (b) whether the Contractor can, by committing extra resources or incurring extra expenditure, make up the time lost.

With any claim for an extension of time for Practical Completion the Contractor shall give the Independent Certifier written notice of the period of extension claimed.

If the Independent Certifier assesses that the Contractor is entitled to an extension of time for Practical Completion, the Independent Certifier shall, within 28 days of the later of receipt of a valid delay notice under clause 39.1 and a valid extension of time claim under clause 39.2A, grant a reasonable extension of time to the Date for Practical Completion. If within the 28 days the Independent Certifier does not grant the full extension of time claimed, the Independent Certifier shall before the expiration of the 28 days give the Contractor notice in writing of the reason.

In determining a reasonable extension of time for an event causing delay, the Independent Certifier shall have regard to whether the Contractor has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay.

To the extent that the Contractor is not able to demonstrate, to the reasonable satisfaction of the Independent Certifier, that the activities delayed are activities on the critical path (including as demonstrated on the latest approved Contractor's Program provided under clauses 39.2(A(b) and (c)) such that the Contractor is or will be delayed in reaching Practical Completion, the Contractor shall not be entitled to an extension of time.

Notwithstanding that the Contractor is not entitled to or has not claimed an extension of time, the Independent Certifier may at any time and from time to time before the issue of the Final Certificate in its absolute discretion and without being obliged to do so for the benefit of the Contractor or otherwise by notice in writing to the Contractor extend the Date for Practical Completion for any reason.

A delay by the Principal or the failure of the Independent Certifier to grant a reasonable extension of time or to grant an extension of time within 28 days, shall not cause the Date for Practical Completion to be set at large but nothing in this paragraph shall prejudice any right of the Contractor to damages.

40. DELAY – LIQUIDATED DAMAGES

40.1 Liquidated Damages for Delay in Reaching Practical Completion

If the Contractor fails to achieve Practical Completion by the Date for Practical Completion, the Contractor shall be liable to the Principal for liquidated damages at the rate stated in Item 4.3 of Annexure Part A for every day after the 45th Business Day after the Date for Practical Completion, up to and including the Date

of Practical Completion, or the date that the Contract is terminated pursuant to Clause 53, whichever first occurs.

If after the Contractor has paid or the Principal has deducted liquidated damages, the time for Practical Completion is extended, the Principal shall forthwith repay to the Contractor any liquidated damages paid or deducted in respect of the period to and including the new Date for Practical Completion.

The Principal has no right to any other loss, cost expense or damage arising out of or in connection with the Contractor's failure to reach Practical Completion by the Date for Practical Completion other than as set out in this Clause 40.1.

40.2 Limit on Liquidated Damages

The Contractor's liability under Clause 40.1 is limited to the amount stated in item 4.4 of Annexure Part A.

40.3 Bonus for Early Practical Completion

If the Date of Practical Completion is earlier than the Date for Practical Completion the Principal shall pay the Contractor the bonus stated in item 4.5 of Annexure Part A for every day after the Date of Practical Completion to and including the Date for Practical Completion.

The total of the bonus shall not exceed the limit stated in item 4.6 of Annexure Part A.

41. DELAY AND DISRUPTION COSTS

Where the Contractor has been granted an extension of time under Clause 39.4 for any delay or disruption caused by any of the events referred to in item 4.7 of Annexure Part A, the Principal shall pay to the Contractor such extra costs as are necessarily incurred by the Contractor by reason of the delay.

Where there is a limit specified on the amount of any delay damages payable to the Contractor in item 4.8 of Annexure Part A, then the Contractor's entitlement under this clause shall be limited to that amount.

Nothing in this Clause 41 shall -

- (a) oblige the Principal to pay extra costs for delay or disruption which have already been included in the value of a Variation or any other payment under the Contract;
- (b) oblige the Principal to pay extra costs for delay or disruption in excess of the amounts referred to in item 4.8 of Annexure Part A; or
- (c) limit the Principal's liability for damages for breach of contract.

42. CERTIFYING PRACTICAL COMPLETION

42.1 Anticipated Practical Completion

The Contractor must give the Principal and the Independent Certifier prior notice of the date on which it reasonably anticipates Practical Completion will be achieved at the following times:

- (a) at least 4 months prior to the anticipated date of Practical Completion (where possible); and
- (b) at least 20 Business Days prior to the anticipated date of Practical Completion.

As soon as practicable following receipt of the notice required by subparagraph (b) above, each of the Independent Certifier and the Principal's Representative shall carry out a joint inspection of the Works and liaise with the Contractor in relation to any matters which:

- (c) in the reasonable opinion of the Principal's Representative may prevent the Works from achieving Practical Completion; and
- (d) in the reasonable opinion of the Independent Certifier may prevent the Independent Certifier from issuing a Certificate of Practical Completion.

42.2 Certificate of Practical Completion

When the Contractor is of the opinion that Practical Completion has been reached, the Contractor must issue a written notice to the Principal and the Independent Certifier, requesting the Independent Certifier to issue a Certificate of Practical Completion.

Within 5 days of receipt of a request to certify Practical Completion, the Independent Certifier must either:

- (a) issue a Certificate of Practical Completion for the Works; or

- (b) provide the Principal with the reasons for not issuing a certificate, and provide a detailed list of work required to be completed in order for the certificate to be issued.

Where a detailed list is provided under clause (b) above, the Contractor must carry out and complete all items of work listed with due expedition and without delay. Once these works have been completed, the Contractor must again issue a written notice to the Principal under this clause and the balance shall apply.

42.3 Requirements Post Practical Completion

Within 3 months of the Date of Practical Completion the Contractor must do all things required to procure the issue of, and must deliver, to the Principal the following:

- (a) final as-built drawings of the Works (accurately describing how the structure or assets the subject of the Works has been constructed and prepared in accordance with industry standards);
- (b) any survey of the completed Works;
- (c) all certificates issued by any public Authority in relation to any part of the Works which have not previously been delivered; and
- (d) a final Certificate of Occupation (if relevant) under Part 8 of the *Environmental Planning & Assessment Act* in respect of the Works.

43. DEFECTS LIABILITY PERIOD AND FINAL COMPLETION CERTIFICATE

43.1 Notification and Rectification of Defects

The Defects Liability Period shall commence at 4:00 pm on the Date of Practical Completion.

As soon as possible after the Date of Practical Completion, the Contractor shall rectify any defects or omissions in the Works or the work under the Contract existing at the Date of Practical Completion.

At any time during the Defects Liability Period, the Principal's Representative and Independent Certifier may inspect the Works for the purpose of ascertaining what defects and omissions (if any) in the Works are required to be made good by the Contractor.

Following each inspection the Independent Certifier may issue a notice setting out all defects and omissions (if any) which in the reasonable opinion of the Independent Certifier are required to be made good (**Defect Notice**). Where a Defect Notice is issued it must also be provided to the Independent Certifier.

The Contractor must promptly make good any omission or defect specified in the Defect Notice which in the reasonable opinion of the Independent Certifier is required to be made good, and within the time reasonably specified by the Independent Certifier. The Contractor must give notice to the Independent Certifier when those defects or omissions have been made good.

The Defect Notice shall identify the omission or defect and state a date by which the Contractor shall complete the rectification work and may state a date by which the rectification work shall commence and further may provide that in respect of the rectification work there shall be a separate Defects Liability Period. The separate Defects Liability Period shall commence on the date the rectification work is completed. This Clause 43 shall apply in respect of the rectification work and the Defects Liability Period for that rectification work.

If the rectification work is not commenced or completed by the stated dates, the Principal may have the rectification work carried out at the Contractor's expense, but without prejudice to any other rights that the Principal may have against the Contractor with respect to such omission or defect and the reasonable cost of the rectification work incurred by the Principal shall be a debt due from the Contractor to the Principal.

If it is necessary for the Contractor to carry out rectification work the Contractor shall do so at such times and in such manner which cause as little inconvenience to the occupants and users and owners of the Works as is reasonably possible. The Principal must use its reasonable endeavours to ensure that the Contractor is afforded reasonable access to the Site and the Works during and after normal business hours sufficient to enable it to perform its obligations under this Clause 43.

43.2 Final Completion Certificate

The provisions of clauses 42.1 and 42.2 apply *mutadis mutandis* to the issues of Final Completion Certificate as if the reference in those clauses to:

- (a) the Certificate of Practical Completion were a reference to the Final Completion Certificate; and
- (b) the reference to Practical Completion was to Final Completion.

44. DEMOBILISATION AND CLEANING

The Contractor shall keep the Site and the work clean and tidy. The Contractor shall regularly remove rubbish and surplus material.

Within 14 days after the Date of Practical Completion, the Contractor shall remove Temporary Works and Constructional Plant.

The Principal's Representative may extend the time for removal of Temporary Works or Constructional Plant necessary to enable the Contractor to perform remaining obligations.

Notwithstanding the provisions of Clause 53, if the Contractor fails to comply with any obligation imposed on the Contractor by this Clause 44, the Principal's Representative may, after the Principal's Representative has given reasonable notice in writing to the Contractor, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Principal in having the work so carried out may be recovered by the Principal as a debt due from the Contractor to the Principal. The rights given by this paragraph are in addition to any other right.

45. SUBCONTRACTOR / SUPPLIER WARRANTIES

The Contractor must use best endeavours to obtain warranties (that are each capable of being assigned) from subcontractors in favour of the Principal in accordance with Annexure Part I.

If, despite the Contractor using best endeavours, it is not able to obtain such warranties in favour of the Principal in accordance with this Clause 45, the Contractor must:

- (a) assign to the Principal or its nominee (at no cost to the Principal) all manufacturers' and suppliers' warranties and guarantees which are issued or given in respect of the Works and any materials incorporated in the Works; and
- (b) ensure that such warranties and guarantees are assigned as from their effective dates and in any case no later than the Date of Practical Completion.

46. PROGRESS CERTIFICATES AND PAYMENTS

46.1 Timing

On the last day of each month and upon the issue of a Certificate of Practical Completion, the Contractor shall deliver to the Independent Certifier claims for payment in accordance with the Contract and give a copy to the Principal's Representative.

If the time for any payment claim under the preceding paragraph falls due on a day which is Saturday, Sunday, Statutory or Public Holiday the Contractor shall submit the claim either on the day before or next following that date which itself is not a Saturday, Sunday, Statutory or Public Holiday.

If the Contractor submits a payment claim before the time for lodgement of that payment claim, such early lodgement shall not require the Independent Certifier to issue the payment certificate in respect of that payment claim earlier than would have been the case had the Contractor submitted the payment claim in accordance with the Contract.

46.2 Claim

Claims for payment shall be in writing and:

- (a) be supported by and substantiated with appropriate documentation and evidence of the total amount claimed by the Contractor and such additional information as the Independent Certifier may reasonably require, including without limitation a statutory declaration referred to in clause 52;
- (b) include the Contractor's calculation of the total amount in respect of the Works the Contractor is entitled to claim representing that proportion of the Contract Sum equal to the proportion of the work under the Contract having been completed in accordance with the Contract to that time (including a breakdown of the Contract Sum components), together with all other amounts then otherwise due to the Contractor arising out of the Contract;
- (c) be an individual claim for each person comprising the Principal (each for 50% of the total amount claimed); and
- (d) set out the total amount previously certified under Clause 46.3.

The Principal's Representative also has the right (acting reasonably) to request information in relation to any claim for payment.

46.3 Certificate

Within 7 days of receipt of a claim for payment, the Independent Certifier shall assess the claim and if valid, shall issue to the Principal and to the Contractor a payment certificate stating the amount of the payment which, in the Independent Certifier's opinion, is to be made by the Principal to the Contractor or by the Contractor to the Principal.

46.4 Calculations and Allowances

The Independent Certifier shall set out in the certificate the calculations employed to arrive at the amount and, if the amount is more or less than the amount claimed by the Contractor, the reasons for the difference.

The Independent Certifier shall also set out, as applicable, in any payment certificate issued pursuant to Clause 46, the allowances made for -

- (a) the value of work carried out by the Contractor in the performance of the Contract to the date of the claim;
- (b) amounts otherwise due from -
 - (i) the Principal to the Contractor; and
 - (ii) the Contractor to the Principal under the Contract;
- (c) amounts determined under Clause 58 and not further disputed;
- (d) amounts paid previously under the Contract;
- (e) amounts previously deducted for retention moneys pursuant to item 2.1 of Annexure Part A; and
- (f) retention moneys to be deducted pursuant to item 2.1 of Annexure Part A,

arising out of the Contract resulting in the balance due to the Contractor or the Principal, as the case may be.

46.5 Time for payment

Subject to the provisions of the Contract, within 15 Business Days of receipt by the Independent Certifier of a claim for payment including the Final Payment Claim the Principal shall pay to the Contractor or the Contractor shall pay to the Principal, as the case may be, an amount not less than the amount shown in the relevant payment certificate as due to the Contractor or to the Principal, as the case may be, or if no payment certificate has been issued, the Principal shall pay the amount of the Contractor's claim.

A payment made pursuant to this Clause 46 shall not prejudice the right of either party to dispute under Clause 58 whether the amount so paid is the amount properly due and payable and on determination (whether under Clause 58 or as otherwise agreed) of the amount so properly due and payable, the Principal or the Contractor, as the case may be, shall be liable to pay the difference between the amount of such payment and the amount so properly due and payable.

46.6 No claim

If the Contractor fails to make a claim for payment under this Clause 46, the Independent Certifier may nevertheless issue a payment certificate and the Principal or the Contractor, as the case may be, shall pay the amount so certified within 14 days of that Certificate.

46.7 Payment on account

Payment of moneys shall not be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only, except as provided under Clause 48.2.

46.8 Payment for Unfixed Plant and Material

The Principal shall be obliged to pay for any item of unfixed plant and materials (notwithstanding that the item has not been incorporated into the Works) if the Contractor:

- (a) procures from the relevant subcontractor or supplier additional security in the sum of the total value of the unfixed plant and materials evidence of which is provided to the Principal together with the relevant claim for payment; and
- (b) establishes to the satisfaction of the Independent Certifier that the Contractor has paid for the item, the item is properly stored, labelled the property of the Principal and is adequately protected.

Upon payment to the Contractor of the amount which includes the value of the item, and upon the release of any security, the item shall be the property of the Principal free of any lien or charge.

Any additional security provided for any item of unfixed plant and materials shall be released in accordance with Clause 5.

Except as provided in the Contract, the Principal shall not be obliged to pay for any item of unfixed plant and materials which is not incorporated in the Works.

46.9 Effect of Certificates

The issue of a payment certificate (including a Final Payment Certificate) or a Certificate of Practical Completion shall not constitute approval of any work or other matter nor shall it prejudice any claim by the Principal or the Contractor.

46.10 Recourse to Security

Where, within the time provided by the Contract, the Contractor fails to pay the Principal an amount due and payable under the Contract, the Principal may, subject to Clause 5.5, have recourse to retention moneys, if any, and, if those moneys are insufficient, then to security under the Contract and any deficiency remaining may be recovered by the Principal as a debt due and payable from the Contractor to the Principal.

47. NOT USED

48. FINAL PAYMENT CERTIFICATE

48.1 Final Payment Claim

Within 28 days of the expiry of the Defects Liability Period, or where there is more than one, the last to expire, the Contractor shall provide the Independent Certifier with a final payment claim and endorse it 'Final Payment Claim' and give a copy to Principal's Representative.

In addition to claims for payment required to be included in a payment claim under Clause 46.1, the Contractor shall include in the Final Payment Claim all claims for moneys which the Contractor considers to be due from the Principal arising out of any alleged breach of the Contract. All such claims, whether under Clause 46.1 or this Clause 48.1, which have not already been barred, shall be barred after the expiration of the period for lodging a Final Payment Claim.

48.2 Final Payment Certificate

Within 14 days of receipt of the Contractor's Final Payment Claim or, where the Contractor fails to provide such claim, the expiration of the period specified in Clause 48.1 for the lodgement of the Final Payment Claim by the Contractor, the Independent Certifier shall issue to the Contractor and to the Principal a final payment certificate endorsed 'Final Payment Certificate'. In the certificate the Independent Certifier shall certify the amount which, in the Independent Certifier's opinion, is finally due from the Principal to the Contractor or from the Contractor to the Principal arising out of the Contract or any alleged breach thereof.

Within 14 days after the issue of a Final Payment Certificate, the Principal shall release to the Contractor any security, retention moneys or both then held by the Principal.

49. INTEREST ON OVERDUE PAYMENTS

If any moneys due to either party remain unpaid after the date upon which or the expiration of the period within which they should have been paid, then interest shall be payable thereon from but excluding the date upon which or the expiration of the period within which they should have been paid to and including the date upon which the moneys are paid. The rate of interest shall be the rate stated in item 5.9 of Annexure Part A. Interest shall be compounded at six monthly intervals.

Interest at the rate calculated under this Clause 49 shall also be payable:

- (a) where:
 - (i) the Independent Certifier delays in issuing or fails to issue a payment certificate within the time allowed for in the Contract; and
 - (ii) payment in respect of the progress claim the subject of the delayed or non-existent payment certificate is not made within 28 days of receipt by the Principal's Representative

(subject to the Contractor having complied with the provisions of the Contract in relation to the making of a progress claim);

- (b) on the amount which is stated in any delayed payment certificate or would have been stated in the payment certificate but for the Independent Certifier's failure to issue the payment certificate; and
- (c) from but excluding the date referred to in Clause 46.7(b) to and including the date upon which the moneys are paid.

50. SET OFFS BY THE PRINCIPAL

The Principal may deduct or set off from moneys due to the Contractor any money due and payable from the Contractor to the Principal under the Contract.

51. GOODS AND SERVICES TAX ("GST")

All amounts and consideration in respect of a supply made under or in connection with this Contract are exclusive of GST to the extent it is not otherwise expressly included.

If GST is imposed on or in respect of any supply made under or in connection with this Contract, then the consideration payable for that supply, by the recipient of the supply (the "**Recipient**"), is increased by an amount determined by multiplying the consideration otherwise payable by the rate at which GST is imposed. Amounts payable under this Clause 51 will be payable at the same time the other consideration for the supply is payable.

If the consideration for a supply under or in connection with this Contract is based to any extent on the costs incurred by the party making the supply (the "**Supplier**") (including without limitation, where the supply relates to a claim for damages, recovery under an indemnity or a reimbursement), the cost-based component of consideration will be limited to the actual costs incurred by the Supplier less any input tax credits available in respect of such costs.

The Recipient will not be obliged to pay any amount in respect of GST to the Supplier unless and until a valid tax invoice (being an invoice that complies with the GST Law and contains both the Supplier's and the Recipient's ABN) has been issued by the Supplier in respect of the supply to which that GST relates. Each party agrees to do all things, including providing invoices or other documentation that may be necessary or desirable to enable or assist the other party to:

- (a) claim input tax credits to the maximum extent possible; or
- (b) reduce the amount recoverable from the other party under any indemnity or cost recovery provided for in this Contract.

If there is an adjustment to the consideration payable for a supply, then the Supplier must issue an Adjustment Note to the Recipient and, in addition to the amendment to the GST exclusive consideration payable for the relevant supply, either:

- (i) the Recipient must pay an additional amount to the Supplier calculated as the increase in the consideration payable for the relevant supply multiplied by the prevailing GST rate; or
- (ii) the Supplier must refund an amount to the Recipient calculated as the decrease in the consideration payable for the relevant supply multiplied by the prevailing GST rate.

A party may deduct from or set off against any amount otherwise owing to the other party any amount which is required to be paid or refunded by the other party under this clause 51.

Any policy of insurance which is required to be effected under this Contract must cover any liability for GST which may arise upon settlement of a claim pursuant to that policy.

Each party:

- (A) warrants to the other that at the time of each supply occurring it will have an Australian Business Number and will be registered for GST purposes; and
- (B) indemnifies the other against any losses resulting from it not having an Australian Business Number or being registered for GST purposes.

Terms defined in the *GST Law* (as that term is defined under the *A New Tax System (Goods and Services Tax) Act 1999*) have the same meaning in this Contract unless provided otherwise.

52. PAYMENT OF WORKERS AND SUBCONTRACTORS

52.1 Payment of Workers

The Contractor must with each payment certificate-

- (a) give the Independent Certifier a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all workers who have at any time been employed by the Contractor on work under the Contract have at the date of the direction been paid all moneys due and payable to them in respect of their employment on the work under the Contract; and
- (b) provide documentary evidence to the Independent Certifier that at the date of the direction all workers who have been employed by a subcontractor of the Contractor have been paid all moneys due and payable to them in respect of their employment on the work under the Contract.

52.2 Payment of Subcontractors

Not earlier than 14 days after the Contractor has made each claim for payment under Clause 46.1, and before the Principal makes that payment to the Contractor, the Contractor shall give to the Independent Certifier a statutory declaration by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared, that all subcontractors have been paid all moneys due and payable to them in respect of work under the Contract.

52.3 Withholding of Payment

If the Contractor fails -

- (a) to provide, pursuant to Clause 52.1, the statutory declaration or the documentary evidence, as the case may be; or
- (b) to comply with Clause 52.2,

then notwithstanding Clause 46.1, the Principal may withhold payment of moneys due to the Contractor until the statutory declaration or documentary evidence, as the case may be, is received by the Independent Certifier.

If the Contractor provides to the Independent Certifier satisfactory proof of the maximum amount due and payable to workers and subcontractors by the Contractor, the Principal shall not be entitled to withhold any amount in excess of the maximum amount.

52.4 Direct Payment

Where the Principal is entitled to or is required to make payment to a subcontractor of a sum certified by the Independent Certifier as owing to the subcontractor under a subcontract, the Principal may, on behalf of the Contractor, make the payment directly to the subcontractor and the amount so paid shall be a debt due from the Contractor to the Principal.

At the written request of the Contractor, and out of moneys payable to the Contractor, the Principal may on behalf of the Contractor make payments directly to any worker or subcontractor.

If a payment is made in respect of moneys referred to in Clause 52.1 or 52.2 by the Principal to or in respect of a worker or subcontractor in compliance with a Legislative Requirement, the amount paid shall be a debt due from the Contractor to the Principal.

If any worker or subcontractor obtains a court order in respect of moneys referred to in Clause 52.1 or 52.2 and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may pay the amount of the order, and costs included in the order, to the worker or subcontractor and the amount paid shall be a debt due from the Contractor to the Principal.

After becoming aware of the occurrence of a relation-back day (as defined in the Corporations Law) in respect of the Contractor, the Principal shall not make any payment (other than a payment made pursuant to a Legislative Requirement) to a worker or subcontractor without the concurrence of the official receiver or trustee in bankruptcy of the estate of the bankrupt or the liquidator, as the case may be.

52.5 Building and Construction Industry Security of Payment Act 1999

The Contractor must immediately provide to the Principal a copy of any adjudication application received from a subcontractor, consultant or supplier under the Building and Construction Industry Security of Payment Act NSW 1999.

52.6 Disputes with Subcontractors

In addition to any adjudication application referred to in clause 52.5 above, the Contractor must provide to the Principal copies of all notices, claims and demands which relate to a dispute notice issued by a subcontractor to the Contractor:

- (a) which is in excess of \$250,000; and
- (b) which is responsible for the certification of compliance of the Works.

53. DEFAULT BY THE CONTRACTOR

53.1 Default by the Contractor

If the Contractor commits a substantial breach of contract, the Principal may give the Contractor a written notice to show cause.

Substantial breaches include but are not limited to -

- (a) failing to perform properly the Contractor's Design Obligations;
- (b) failing to provide evidence of insurance;
- (c) failing to comply with a direction of the Principal's Representative or Independent Certifier pursuant to Clause 30.3;
- (d) failing to use the materials or standards of workmanship required by the Contract;
- (e) suspension of work in breach of Clause 37.1;
- (f) failing to proceed with due expedition and without delay in breach of Clause 36.1;
- (g) in respect of Clause 52, knowingly providing a statutory declaration or documentary evidence which contains a statement that is untrue; and
- (h) failing to provide the security required under clause 5.2.

53.2 Requirements of a Notice by the Principal to Show Cause

A notice given under Clause 53.1 shall -

- (a) state that it is a notice under Clause 53 of these General Conditions of Contract;
- (b) specify the alleged substantial breach;
- (c) require the Contractor to show cause in writing why the Principal should not exercise a right referred to in Clause 53.3A;
- (d) specify the time and date by which the Contractor must show cause (which time shall not be less than 7 clear days after the notice is given to the Contractor); and
- (e) specify the place at which cause must be shown.

53.3 Notice of intention to terminate

If by the time specified in a notice given under Clause 53.1, the Contractor fails to show reasonable cause why the Principal should not exercise a right referred to in Clause 53.3A, the Principal, acting reasonably, may by notice in writing advise the Contractor of its intention to -

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract,

and specify the time and date by which the Contractor must remedy the substantial breach (which time shall not be less than 14 clear days after the notice is given to the Contractor).

53.3A Rights of the Principal

If by the time specified in a notice given under Clause 53.3, the Contractor fails to remedy the substantial breach or show reasonable cause why the Principal should not exercise a right referred to in this Clause 53.3A, the Principal, acting reasonably, may by notice in writing to the Contractor -

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate the Contract.

Upon giving a notice under Clause 53.3, the Principal may suspend payments to the Contractor until the earlier of -

- (i) the date upon which the Contractor shows reasonable cause;
- (ii) the date upon which the Principal takes action under Clause 53.3A(a) or (b); or
- (iii) the date which is 7 days after the last day for showing cause in the notice under Clause 53.1.

If the Principal exercises the right under Clause 53.3A(a), the Contractor shall not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under Clause 53.5.

53.4 Procedure when the Principal Takes Over Work

If the Principal takes work out of the hands of the Contractor under Clause 53.3A(a), the Principal shall complete that work and the Principal may without payment of compensation take possession of -

- (a) such of the Constructional Plant and other things on or in the vicinity of the Site as are owned by the Contractor; and
- (b) the Design Documents and other documents, information, materials and the like produced by the Contractor,

which are reasonably required by the Principal to facilitate completion of the work. The Principal shall keep records of the cost of completing the work.

If the Principal takes possession of Constructional Plant, Design Documents or other things, the Principal shall maintain them and, subject to Clause 53.5, on completion of the work, the Principal shall return to the Contractor the Constructional Plant and any things taken under this Clause 53.4 which are surplus and, subject to Clause 6 the Design Documents.

53.5 Adjustment on Completion of the Work Taken Out of the Hands of the Contractor

When work taken out of the hands of the Contractor under Clause 53.3A(a) is completed, the Principal's Representative shall ascertain the cost incurred by the Principal in completing the work and shall issue a certificate pursuant to this Clause 53.5 to the Principal and the Contractor certifying -

- (a) the amount of that cost, and setting out the calculations employed to arrive at that cost;
- (b) the amount which would otherwise have been paid to the Contractor if the work had been completed by the Contractor; and
- (c) the difference.

If the cost incurred by the Principal is greater than the amount which would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the work had been completed by the Contractor, the difference shall be a debt due to the Contractor from the Principal.

If the Contractor is indebted to the Principal, the Principal may retain Constructional Plant or other things taken under Clause 53.4 until the debt is satisfied. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Constructional Plant or other things and apply the proceeds to the satisfaction of the debt and the costs of sale. Any excess shall be paid to the Contractor.

54. DEFAULT BY THE PRINCIPAL

54.1 Default by the Principal

If the Principal commits a substantial breach of contract, the Contractor may give the Principal a written notice to show cause.

Substantial breaches include but are not limited to -

- (a) not used; or
- (b) failing to make a payment within 5 Business Days of the due date under the Contract.

54.2 Requirements of a Notice by the Contractor to Show Cause

A notice given under Clause 54.1 shall -

- (a) state that it is a notice under Clause 54 of these General Conditions of Contract;

- (b) specify the alleged substantial breach;
- (c) require the Principal to show cause in writing why the Contractor should not exercise a right referred to in Clause 54.3;
- (d) specify the time and date by which the Principal must show cause (which shall not be less than 7 clear days after the notice is given to the Principal); and
- (e) specify the place at which cause must be shown.

54.3 Rights of the Contractor

If by the time specified in a notice given under Clause 54.2, the Principal fails to show reasonable cause why the Contractor should not exercise a right referred to in this Clause 54, the Contractor may by notice in writing to the Principal suspend the whole or any part of the work under the Contract.

The Contractor shall lift the suspension if the Principal remedies the breach but if within 28 days of the date of suspension under this Clause 54, the Principal fails to remedy the breach or, if the breach is not capable of remedy, fails to make other arrangements to the reasonable satisfaction of the Contractor, the Contractor may by notice in writing to the Principal terminate the Contract.

The Contractor shall be entitled to recover from the Principal any damages incurred by the Contractor by reason of the suspension.

55. INSOLVENCY

If -

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the Contract;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person -
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under Part X of the Bankruptcy Act 1966 (Cth); or
- (d) in relation to a party being a corporation
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
 - (ii) the party enters a deed of company arrangement with creditors;
 - (iii) a controller or administrator is appointed;
 - (iv) an application is made to a court for the winding up of the party and not stayed within 14 days;
 - (v) a winding up order is made in respect of the party;
 - (vi) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or
 - (vii) a mortgagee of any property of the party takes possession of that property,

then, where the other party is -

- (A) the Principal, the Principal may, without giving a notice to show cause, exercise the right under Clauses 53.4(a) or (b); or
- (B) the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under Clause 54.

The rights given by this Clause 55 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

56. FRUSTRATION OF THE CONTRACT

If under the law governing the Contract, the Contract is frustrated, the Principal shall pay the Contractor -

- (a) the amount due to the Contractor shown in any unpaid payment certificate;
- (b) for work executed prior to the date of frustration, the amount which would have been payable if the Contract had not been frustrated and the Contractor had been entitled to and had made a payment claim on the date of frustration;
- (c) the cost of materials reasonably ordered by the Contractor for the work under the Contract, which the Contractor is liable to accept, but only if the materials become the property of the Principal upon payment;
- (d) costs reasonably incurred by the Contractor in the expectation of completing the whole of the work under the Contract and not included in any payment by the Principal;
- (e) all cash security and retention moneys;
- (f) the reasonable cost of removal of Temporary Works and Constructional Plant; and
- (g) the reasonable cost of return to their place of recruitment of the Contractor's employees engaged in the work under the Contract at the date of frustration.

If the Contractor has provided security other than cash security, the Principal shall promptly release that security to the Contractor.

If the Principal has provided security, when the Contractor has been paid all moneys finally due to the Contractor on any account whatsoever (whether in connection with the Contract or otherwise), the Contractor shall release the security provided by the Principal in respect of the Contract.

57. RIGHTS ON TERMINATION

57.1 Rights of the Parties on Termination

If the Contract is terminated pursuant to Clause 53 or 54, the rights and liabilities of the parties shall be the same as they would have been at common law had the defaulting party repudiated the Contract and the other party elected to treat the Contract as at an end and recover damages.

Subject to clause 6, if the Principal has terminated the Contract, the Principal may also, without payment of compensation, take possession of the Design Documents.

57.2 Preservation of Other Rights

If a party breaches or repudiates the Contract, nothing in Clauses 53 or 54 shall prejudice the right of the other party to recover damages or exercise any other right.

58. DISPUTE RESOLUTION

58.1 Notice of Dispute

If a dispute or difference (together called a '**Dispute**') arises between the Contractor and the Principal out of or in connection with this Contract or the Works, then either party may submit a written notice to the other party and to the Independent Certifier setting out the nature and details of the dispute or difference.

Notwithstanding the existence of a dispute, the Principal and the Contractor must continue to perform the Contract and, subject to Clause 53, the Contractor shall continue with the work under the Contract and the Principal and the Contractor shall continue to comply with Clause 46.1.

58.2 Conference

Within 14 days after receiving a notice of Dispute, the parties shall confer at least once to resolve the dispute or to agree on methods of doing so. At every such conference each party shall be represented by a senior person having authority to agree to such resolution or methods. All aspects of every such conference except the fact of occurrence shall be privileged.

If the Dispute has not been resolved within 28 days of service of the notice of Dispute, that Dispute shall be and is hereby referred to expert determination unless otherwise agreed by the parties in accordance with subclause 58.3.

58.3 Expert Determination

If within a further 14 days the parties have not agreed upon an independent and appropriately qualified expert, the expert shall be nominated by the person by the President of the Resolution Institute (NSW- Sydney Chapter). The expert determination shall be conducted in accordance with the Resolution Institute Expert Determination Rules.

Unless otherwise determined by the expert, each party will pay its own costs incurred in connection with the expert determination together with one half of the expert's fees and hearing allocation costs.

The parties acknowledge that any determination by an expert pursuant to this subclause 58.3 shall be final and binding upon the parties unless the claim the subject of the determination seeks payment of an amount in excess of \$200,000 (excluding GST, interest and costs) or seeks an extension of time in excess of 8 days.

58.4 Summary Relief

Nothing in this clause 58 shall prejudice the right of a party to institute proceedings to enforce payment due under the Contract or to seek injunctive or urgent declaratory relief in respect of an existing dispute under Clause 58 or any other matter arising under the Contract.

59. CIVIL LIABILITY ACT

- (a) It is agreed that, to the maximum extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of the contract or claim in tort (including negligence), in equity, under statute or otherwise in law;
- (b) Without limiting the generality of Clause 59(a), it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in the Contract and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort (including negligence), in equity, under statute or otherwise at law; and
- (c) The Contractor agrees that it will use its reasonable endeavours to:
 - (i) include in each subcontract into which it enters for the carrying out and completion of the whole or any part of the works under the Contract, provisions that, to the extent permitted by law, effectively exclude the operations of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under each subcontract whether such rights, obligations, or liabilities are sought to be enforced as a breach of contract or in tort (including negligence), in equity, under statute or otherwise at law; and
 - (ii) require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out and completion of the whole or any part of the works under the Contract provisions that, to the maximum extent permitted by law, each such further contract will include provisions that effectively exclude the operation of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all rights, obligations or liabilities under such further contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract, in tort (including negligence), in equity, under statute or otherwise at law.

60. LIMITATION OF LIABILITY

60.1 Limitation

60.2 No Exclusion of limitation of liability

Clause 60.1 does not apply to and does not limit the liability of the Contractor for claims by any person against the Principal in respect of:

- (a) personal injury or death or loss of or damage to property under Clause 11.1; or
- (b) breach of any Legislative Requirement relating to the environment under Clause 7.4, including the imposition of any fines or penalties;
- (c) wilful misconduct or fraud;
- (d) loss or liability out of which the Contractor cannot contract; and
- (e) breach of any Intellectual Property Rights under Clause 6.

Clause 60.1 does not apply to and does not limit the liability of the Contractor for any amounts that would have been recoverable by the Contractor under an insurance policy but for a failure by the Contractor to comply with its obligations to effect and keep maintained under the Contract any insurance policy which it is required to effect and maintain.

60.3 Not used

60.4 Consequential loss

Except as provided in Clause 40.1 but notwithstanding any other provision of this Contract, the Contractor is not liable to the Principal whether arising under or in connection with this Contract, the performance or non-performance thereof, or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise), or on any basis in law or in equity or otherwise for any indirect or consequential losses, costs or expenses suffered or incurred by the Principal, loss of profit, loss of revenue, loss of income, loss of contract, loss of productivity, loss of use, loss of opportunity, loss of business investments and financing costs and expenses.

60.5 Non merger

Clauses 60.1 to 60.5 inclusive do not merge on completion and will survive the termination of the Contract.

61. GENERAL

61.1 Waiver

Except as provided at law or in equity or elsewhere in the Contract, none of the terms of the Contract shall be varied, waived, discharged or released, except with the prior consent in writing of the Principal in each instance. No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

61.2 Assignment and novation

The Principal may, at any time assign or novate, or otherwise transfer all or any part of its rights or liabilities under this agreement without the consent of the Contractor. The Contractor agrees to execute any document reasonably required by Principal to give effect to the assignment, novation or other transfer, including a deed of novation in the form set out in Annexure Part L.

The Contractor must not assign, novate or otherwise transfer all or any payment, right, benefit or interest under this Contract without the prior written consent of the Principal.

The Contractor must not grant or take any security interest or lodge any caveat against the Site.

61.3 Governing law and jurisdiction

This agreement is governed by the law in force in New South Wales, and each party irrevocably submits to the non-exclusive jurisdiction of courts of New South Wales in respect of any proceedings arising out of or in connection with this agreement.

61.4 Invalidity and enforceability

If any provision of this agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

Clause 61.4 does not apply where enforcing the provision of this agreement in accordance with clause 61.4 would materially affect the nature or effect of the parties' obligations under this agreement.

61.5 Variation

A variation of any term of this agreement must be in writing and signed by the parties.

61.6 Further action

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this agreement and the works contemplated by it.

61.7 Entire agreement

This agreement states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

61.8 Counterparts

This agreement may be executed in any number of counterparts.

61.9 Relationship of the parties

Nothing in this agreement gives a party authority to bind any other party in any way.

Nothing in this agreement imposes any fiduciary duties on a party in relation to any other party.

Nothing in this agreement operates to restrict or otherwise affect:

- (a) the statutory discretion of the Barangaroo Delivery Authority in exercising its powers as a statutory authority: or
- (b) the unfettered discretion of the Barangaroo Delivery Authority as to the exercise of its statutory functions and powers as roads authority under the *Roads Act 1993* (NSW).

If there is any conflict between the unfettered discretion of the Barangaroo Delivery Authority in the exercise of such powers, and the performance of the Principal's obligations in this Contract, the former prevails. The Contractor agrees that the Principal is not liable for, and releases the Principal from, liability or loss arising from, and costs incurred in connection with, the exercise of powers by the Barangaroo Delivery Authority as a statutory authority.

61.10 Exercise of discretions

Unless expressly required by the terms of this agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this agreement.

A party may impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver

61.11 Media Releases and Confidential Information

The Contractor shall not issue any information, publication, document or article for publication concerning the work under the Contract or the Principal, in any media without prior approval of the Principal, which approval shall not be unreasonably withheld. The Contractor shall refer to the Principal any enquiries concerning the Works from any media.

61.12 Several Liability

Notwithstanding any other term of this Contract, the liability of the Principals is several under this Contract as to 50% each.

62 SPECIAL EVENTS

- (a) Subject to the remainder of this Clause 62, the Contractor must comply with all reasonable directions given to the Contractor by the Principal in relation to a Special Event.
- (b) Nothing in this Clause 62 requires the Contractor to:
 - (i) vacate the Site; or
 - (ii) clear the Site.

- (c) The Principal must, when exercising its rights under this Clause 62, minimise disruption to the Works.
- (d) In respect of Special Events, the Principal must provide the Contractor with at least 1 month prior written notice of each Special Event.
- (e) Delay caused by the Contractor's compliance with a direction pursuant to Clause 62 may, subject to Clause 39, justify an extension of time under Clause 39.
- (f) To the extent the Contractor's compliance with a direction pursuant to Clause 62 causes the Contractor to incur more or less cost than it otherwise would have incurred, then the difference shall be valued as a Variation under Clause 32.5.

CONTRACT PARTICULARS

Parties

1.1	The address of the Principal:	Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
		21/201 Kent St, Sydney NSW 2000
1.2	The address of the Contractor:	Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
1.3	Contractor's Key Personnel:	[REDACTED]
1.6	The Independent Certifier:	Altus Group Consulting PTY LTD, [REDACTED]
1.7	The address of the Independent Certifier:	Level 12, 1 Market Street, Sydney NSW 2000
1.8	Principal's Representative	TBC by Principal

Security

2.1	Amount of the Bank Guarantee:	[REDACTED]
2.2	The percentage by which the Principal's entitlement to security is reduced on Practical Completion:	50%
2.3	Time for provision of security:	Within 10 Business Days of the date of execution of this Contract

Insurance

3.1	Insurance of the work under the Contract:	To be taken out by the Contractor	
3.2	Amount of public liability insurance:	[REDACTED]	
3.3	Amount of Contractor professional indemnity insurance:	[REDACTED]	
	Period for which Contractor's professional indemnity insurance shall be maintained after issue of the Final Completion Certificate:	[REDACTED]	
3.4	Consultants professional indemnity insurance:	Discipline	Amount
	Period for which each Consultant's professional indemnity shall be maintained after issue of the Final Completion Certificate:	[REDACTED]	

Time

4.1	The Date for Commencement:	03 rd July 2017
4.2	The Date for Practical Completion:	22 nd October 2018
4.3	Rate of Liquidated Damages:	[REDACTED]
4.4	Limit of Liquidated Damages:	[REDACTED]
4.5	Bonus for early Practical Completion:	Not applicable
4.6	Limit of bonus:	Not applicable
4.7	Events for which extra costs for delay or disruption are payable:	An event specified in Clause 39.2(a), (e), (f), (g), (h), (i), (j) and (k), (l) and (m) together with an event specified in paragraphs (c) of the definition of Force Majeure Event
4.8	Limit on extra costs for delay or disruption are payable:	Not used.

Price

5.1	Total Contract Sum:	[REDACTED]
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5.2	Design and Construction Cost Component:	Not used
5.3	Scoped Barangaroo Works Component: (Infrastructure)	Not Used
5.4	Un-scoped Barangaroo Works Component: (Public Domain)	Not Used
5.5	Remediation Component (if applicable):	Not Used
5.6	Head Work Costs Component (if applicable)	Not Used
5.8	The charge for overheads, administrative costs, site supervision, establishment costs, attendance and profit for Daywork:	Not used
5.9	The rate of interest on overdue payments:	██████████ per annum above Westpac 90 day bill rate

PRINCIPALS' PROJECT REQUIREMENTS

The Principals' Project Requirements comprise the following:

1. The scope of works to upgrade Hickson Road comprises the following:
 - a. Stage 1 – Shelley Street to Napoleon Street;
 - b. Stage 2 – Napoleon Street to Watermans Quay; and
 - c. as further defined in Annexure Part C of this Contract
2. The Contractor will be responsible for the Project Management, Design and Construction of the Works..
3. The Contractor will manage, coordinate and deliver the Works to completion according to the contract programme.
4. The Contractor will provide appropriate and timely communication of upcoming works to affected parties and take all reasonable steps to coordinate and stage the Works in a manner that:
 - a. maintains reasonable traffic flows;
 - b. maintains safety and amenity of pedestrians and the public; and
 - c. minimises disruption and nuisance to adjoining owners and occupants.
5. The Contractor will prepare and manage over the course of the Works the Client Decision Making Schedule which is to be prepared for Principals' acceptance within 30 days of Contract execution.
6. The Contractor will establish the Construction Licence Area/s for the purpose of staging the Works to the extent permitted by the Barangaroo Delivery Authority in its capacity as the Authority.
7. The Contractor will pay all fees and lodge all bonds and other securities required by Authorities, except to the extent such fees are an exclusion stated in Annexure Part C of this Contract.
8. Except to the extent identified in Annexure Part C, the Contractor will manage all Authorities and coordinate the Works with the Authorities to deliver the Works to the contract programme.
9. The Contractor will coordinate the Works and cooperate with the Independent Certifier as applicable.
10. The Contractor will ensure the protection of all property and infrastructure both within the Site and external to the Site in performing the Works.
11. The Contractor will attend works meetings to address day to day project matters on a regular basis as the parties agree, and be available to attend PCG meetings by invitation as required.
12. The Contractor will comply with Hickson Road and Sussex Street Stage 1A Road Works Review of Environmental Factors Approval approved on 19 January 2016.
13. The attached Approvals and Responsibilities Matrix

Approvals and Responsibility Matrix

The following are the list of approvals required for the project and who is responsible for each approval.

Approval required	Consent Authority or party	Application to authority or party by	Compliance with authority conditions by	Management of authority or party by	Fees & charges by	Time for approvals	Comment
Changes to REF conditions	Barangaroo Delivery Authority	Barangaroo Delivery Authority	Contractor	Principal	Barangaroo Delivery Authority	No allowance made for changes to REF	Requirements by Authorities after REF determination
Footpath closures and occupancy permits	Barangaroo Delivery Authority	Contractor	Contractor	Contractor	Barangaroo Delivery Authority	10 Business Days	Subject to full and correct documentation to support application including pedestrian management
Temporary Structure Permits	Barangaroo Delivery Authority	Contractor	Contractor	Contractor	Barangaroo Delivery Authority	10 Business Days	Subject to full and correct documentation to support application including structural certification and bond/bank guarantee for B-class hoardings
Traffic management plans approval	Barangaroo Delivery Authority (plus potentially Sydney Coordination Office, Roads and Maritime Services)	Contractor	Contractor	Contractor	Barangaroo Delivery Authority	20 Business Days	Liaison or consultation with City of Sydney Council or Roads and Maritime Services will be undertaken by the Contractor or Principal
Road occupancy licences and permits	Barangaroo Delivery Authority Transport for NSW (Transport Management Centre)	Contractor	Contractor	Contractor	Barangaroo Delivery Authority	10 Business Days	Barangaroo Delivery Authority to issue permits under the Roads Act 1993. A Road Occupancy Licence from Transport Management Centre is a requirement for any works on a road and must be acquired prior to Barangaroo Delivery Authority issuing permits requiring this licence. This licence has a minimum 10 day lead time.

Approval required	Consent Authority or party	Application to authority or party by	Compliance with authority conditions by	Management of authority or party by	Fees & charges by	Time for approvals	Comment
							All permits subject to full and correct documentation to support application including pedestrian and traffic management.
Roads and Maritime Services for traffic lights	Roads and Maritime Services	Contractor	Contractor	Contractor	Principal	Prior to commencement of relevant work stage	Deed to be entered into by RMS and BDA
City of Sydney Council inspections and acceptance	City of Sydney Council	Barangaroo Delivery Authority	Contractor if directed by Principal	Contractor if directed by Principal	Barangaroo Delivery Authority	No allowance for approvals from CoS	Two hours notice has been allowed for inspections. Any directions required as a result of CoS will be provided by the Principal
Adjoining property owners	Property Owner	Contractor	Barangaroo Delivery Authority	Contractor	Barangaroo Delivery Authority, (If applicable)	Prior to commencement of relevant work stage	The need to liaise with adjoining owner will be identified by the Contractor if required for the Works. BDA will remain responsible for any adjoining owner property issues.
Occupation of the C1/H1 area for the HRU site establishment/amenities	LLMP				Principal, Fees and charges do not apply	Approved by virtue of Contract	Variation option is included in Annexure Part C Scope of works for relocation and operation of these facilities within a work zone on Hickson Rd if requested by Principal
Authority and Utility Provider	Accept as identified above any relevant authority or utility provider Including without limitation Sydney	Contractor	Contractor	Contractor	Principal	10 days prior to commencement of relevant work stage	Except to the extent that the BDA is the Road Authority in which case fees will not be levied. Without limitation RMS Fees, Works Authorisation Fees, Verifier and Road Safety Audit cost shall be payable by the principal

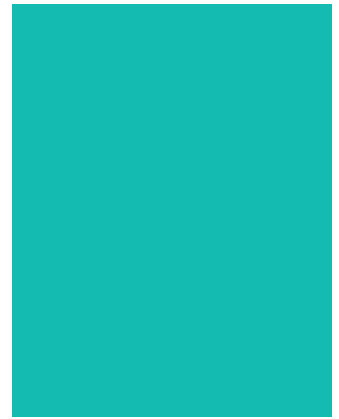
Approval required	Consent Authority or party	Application to authority or party by	Compliance with authority conditions by	Management of authority or party by	Fees & charges by	Time for approvals	Comment
	Water, Roads & Maritime Services, Ausgrid, Jemena						
Independent Certifier				Principal	Principal	Refer to Contract	
Increases in state environmental levies post June 2018.					Principal	N/A	
Fees and charges associated with any contaminated material classification > GSW					Principal	N/A	
Any legal, surveying or other related works to manage and develop appropriate stratum and titling documentation, management statements, shared services and facilities statements and the like		Barangaroo Delivery Authority		Barangaroo Delivery Authority	Barangaroo Delivery Authority	N/A	Contractor to assist BDA as required.
Land surveyor and legal costs associated with lot definitions, titling for services and other easements, premises plans, extinguishment of existing rights and easements etc.		Barangaroo Delivery Authority			Barangaroo Delivery Authority	N/A	Contractor to assist BDA as required.

Approval required	Consent Authority or party	Application to authority or party by	Compliance with authority conditions by	Management of authority or party by	Fees & charges by	Time for approvals	Comment
Works in areas for which Barangaroo Delivery Authority is not the relevant road authority	City or Sydney Council or Roads and Maritime Services	Barangaroo Delivery Authority	Contractor	Barangaroo Delivery Authority	Principal	20 days prior to commencement of relevant work stage	

SCOPE OF WORKS

Barangaroo South Hickson Road Upgrade Works, Stages 1 and 2 Scope of Works

Project No: 163782
Date: 19/06/17





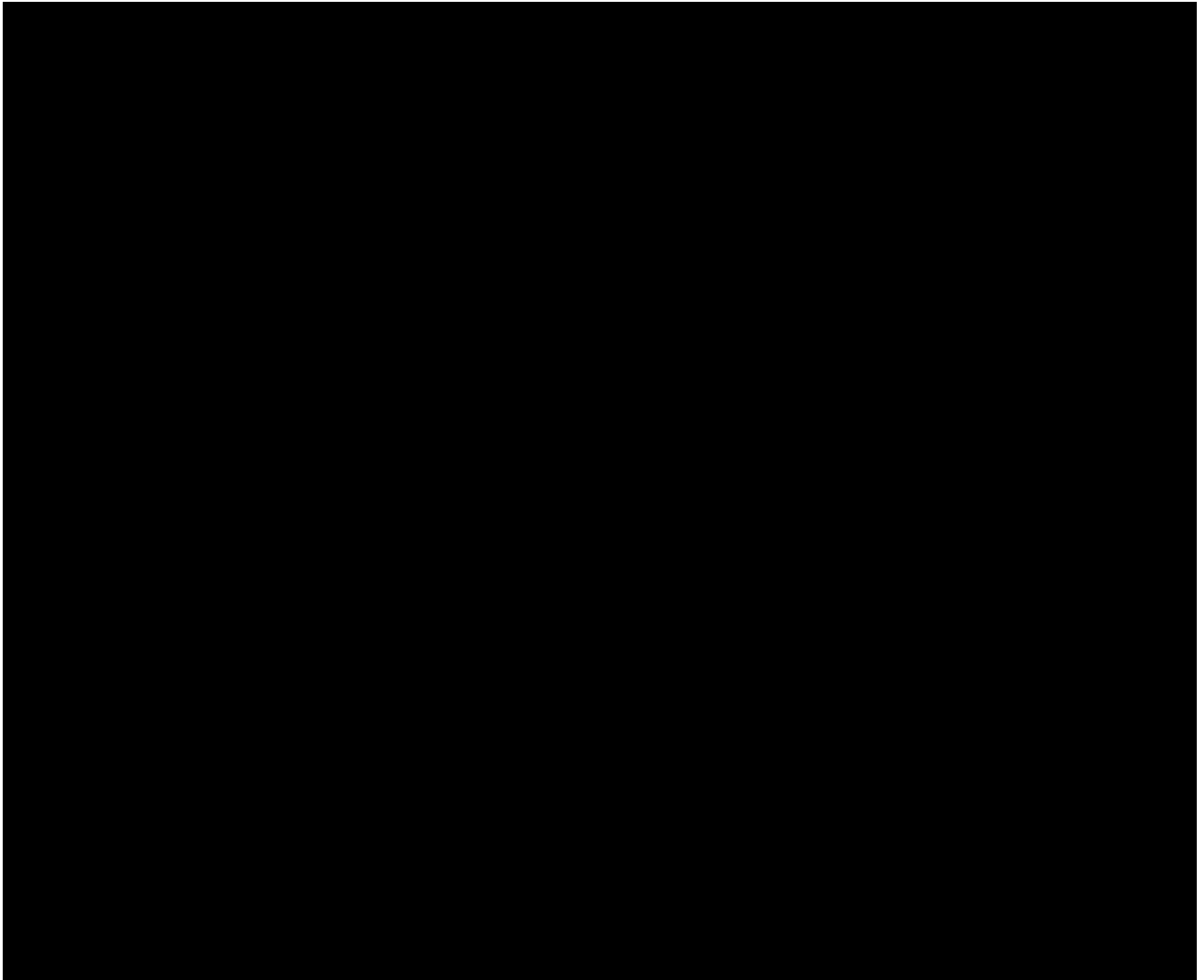
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1.1	Location Plan	3
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1.0 Introduction

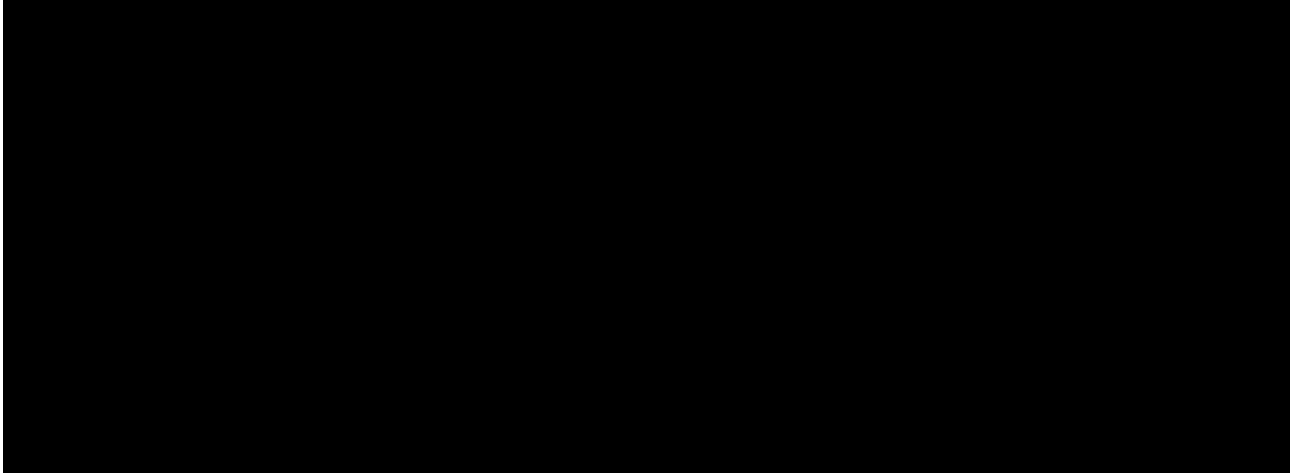
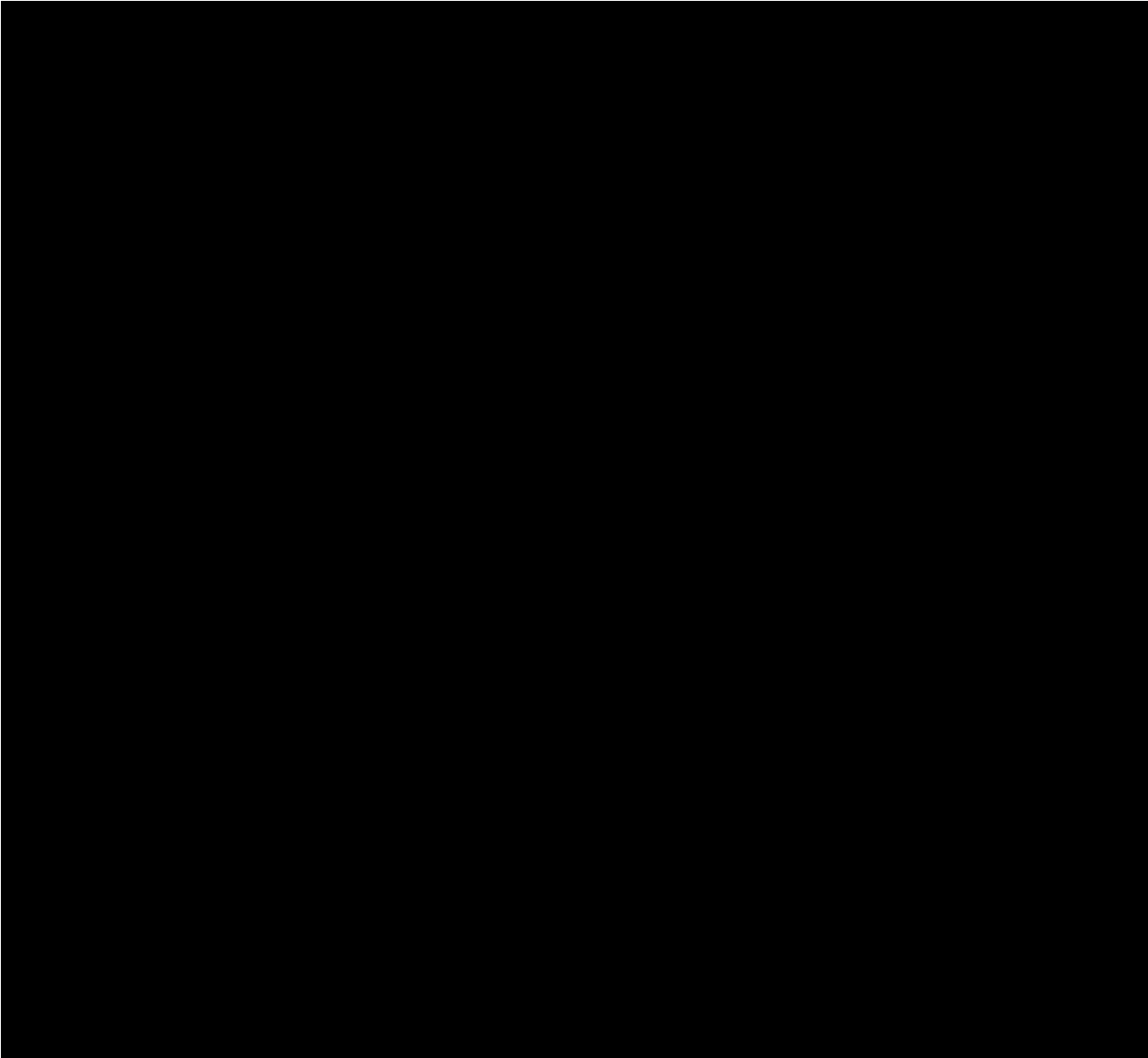


1.1 Location Plan



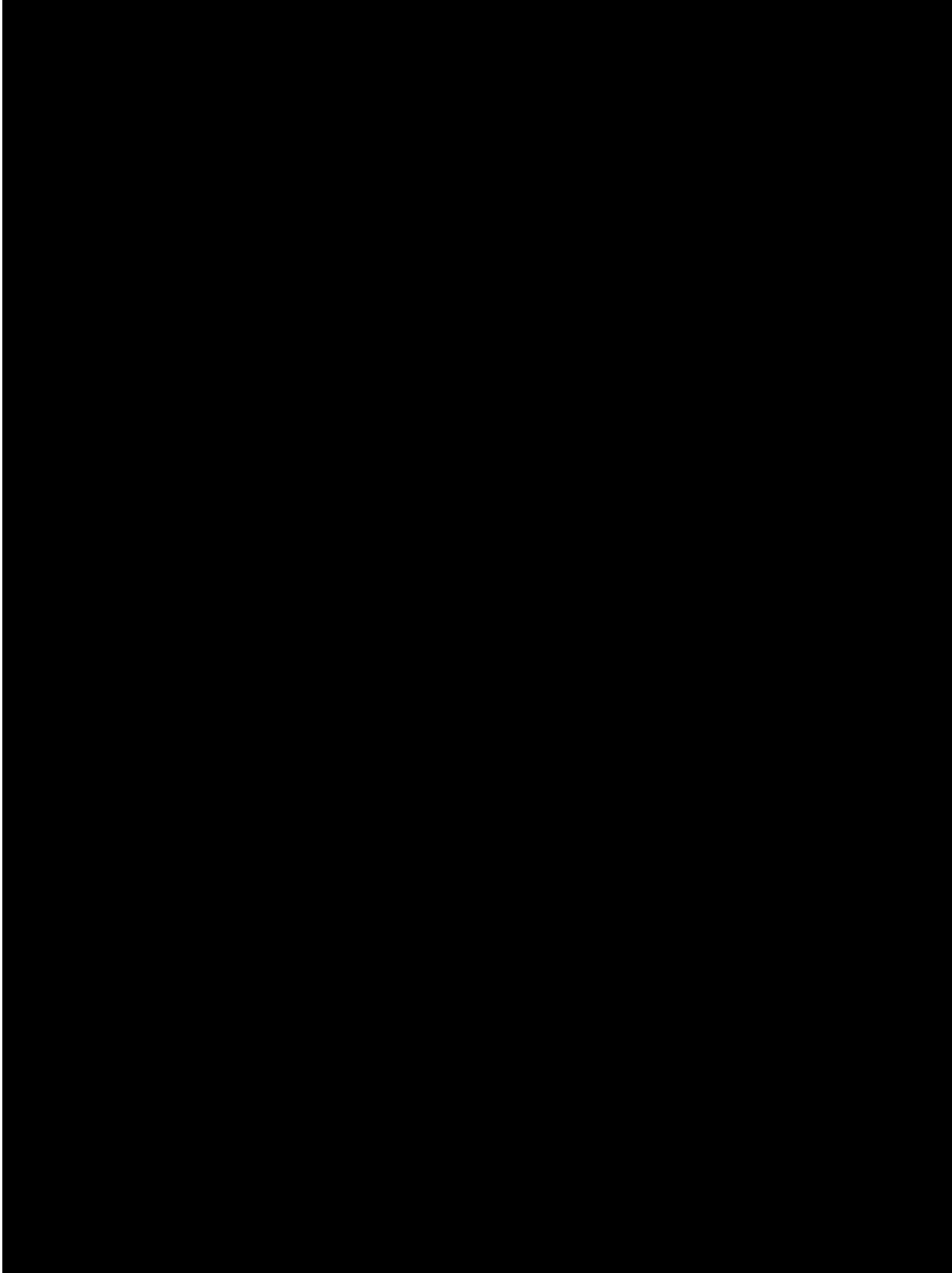
1.2 Scope allocation

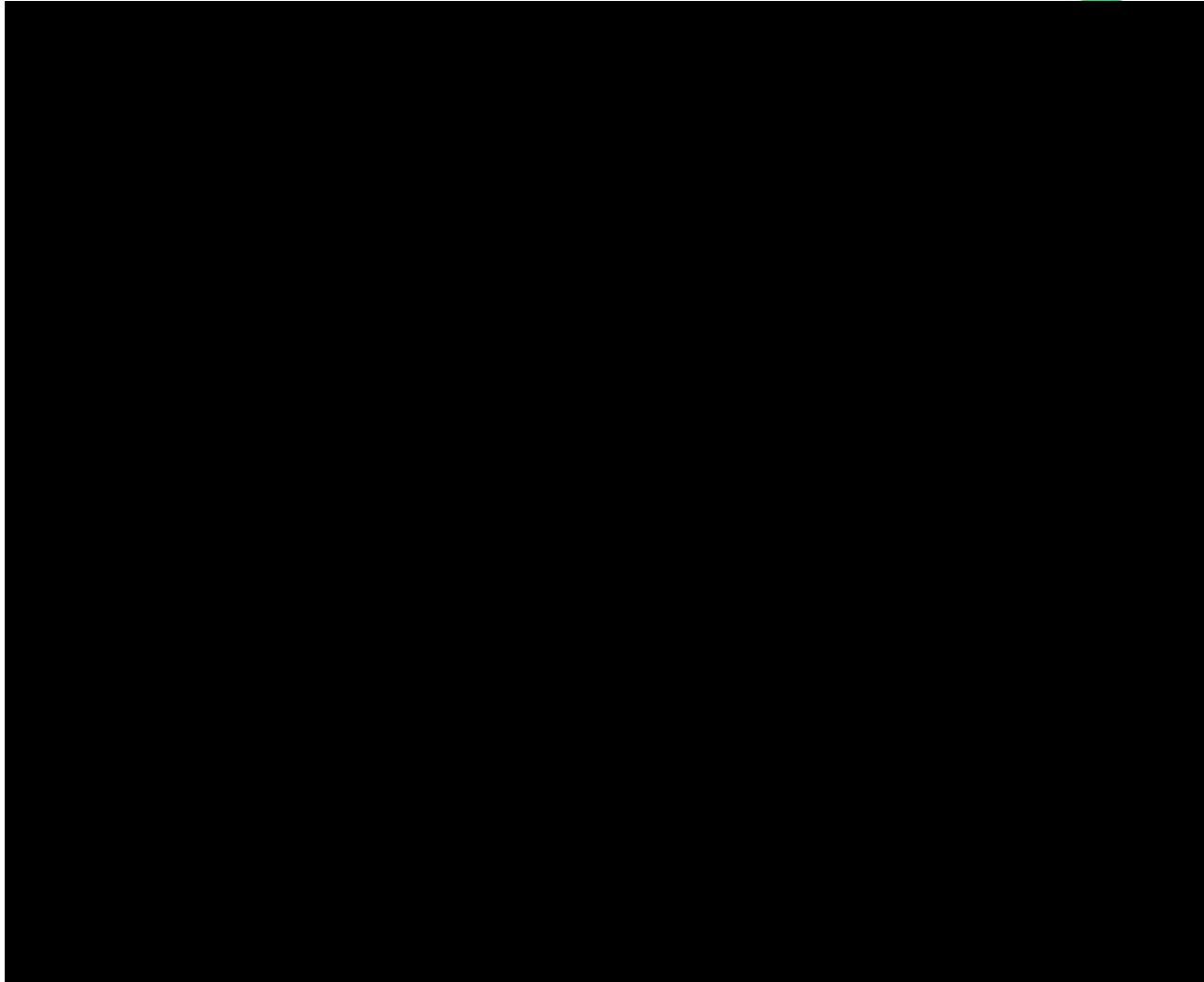
Barangaroo South
Hickson Road Upgrade Works Stages 1 and 2



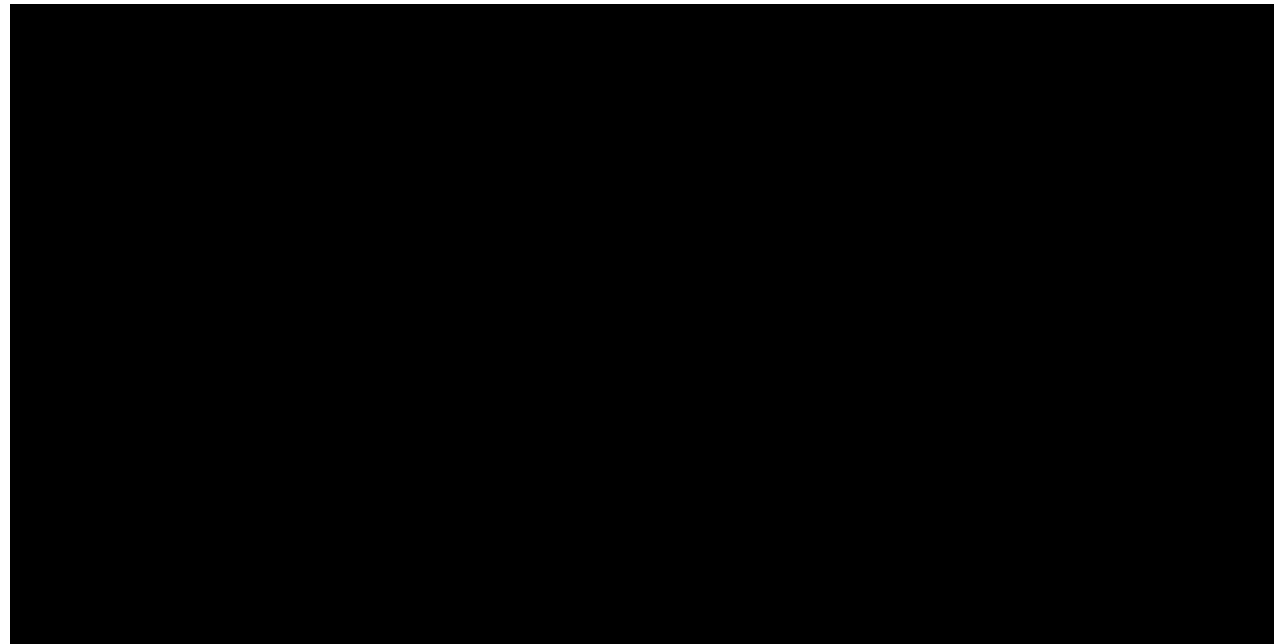


2.0 Lump Sum Price Summary

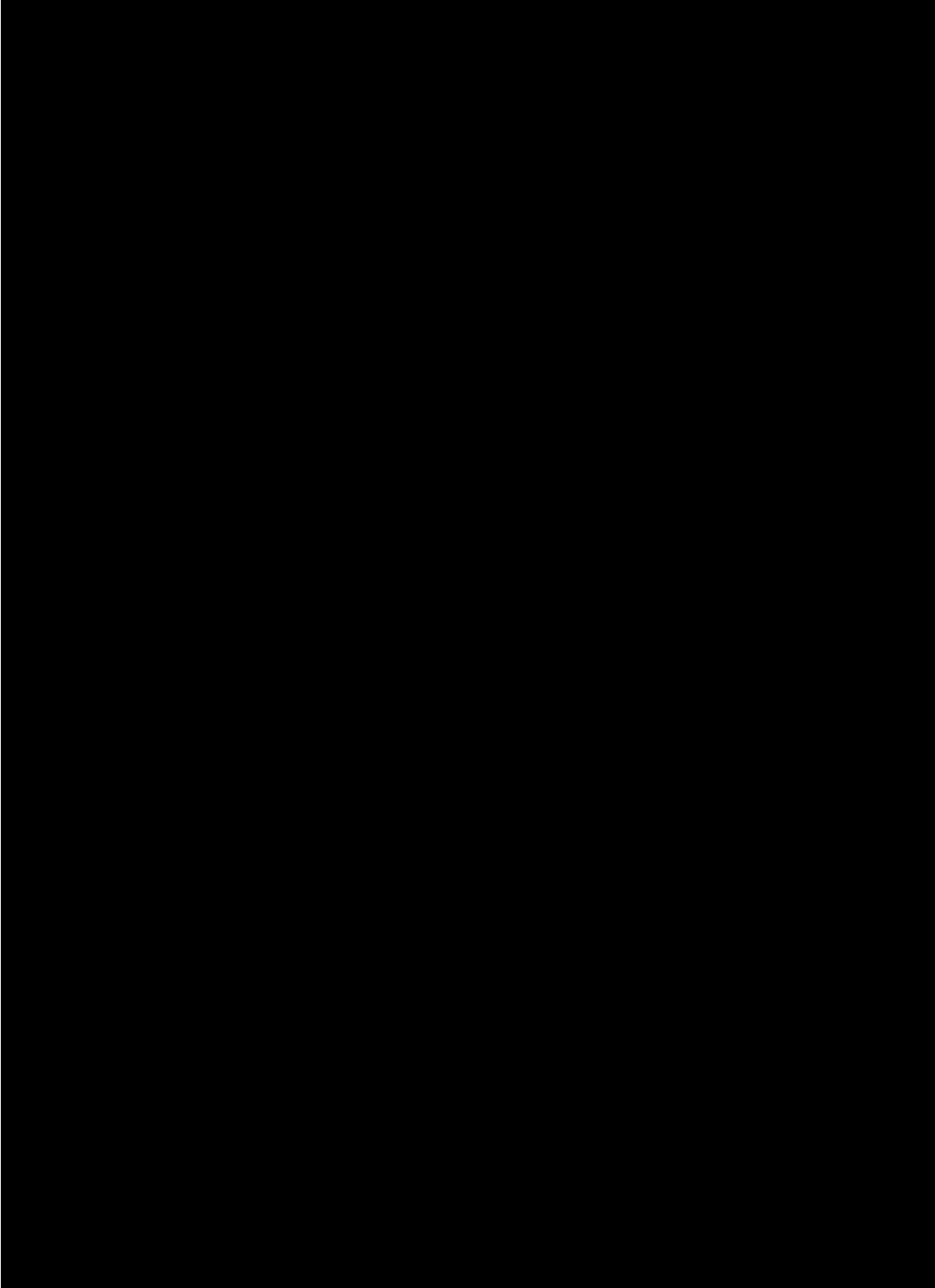


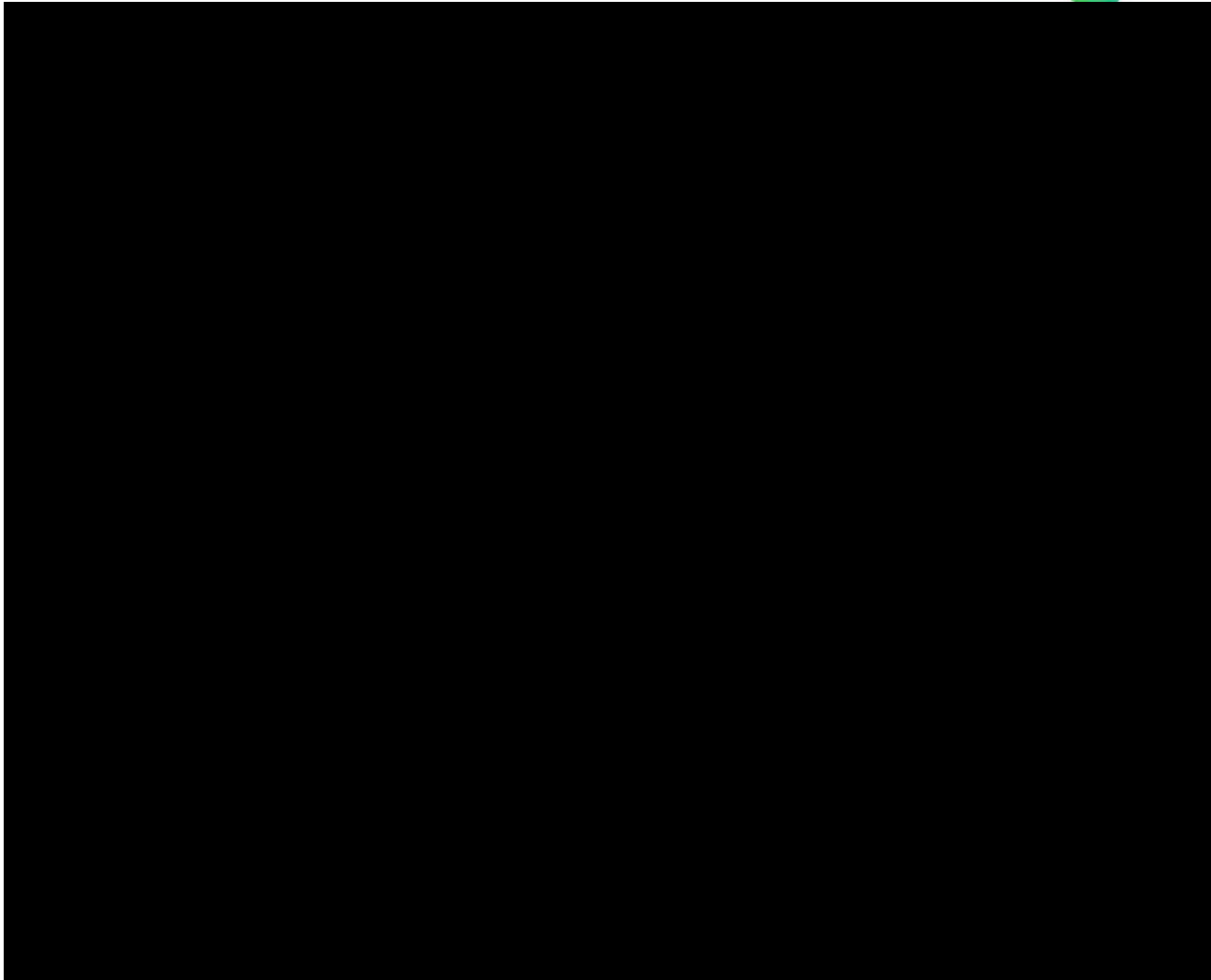


2.1 Design & Project Management Fee

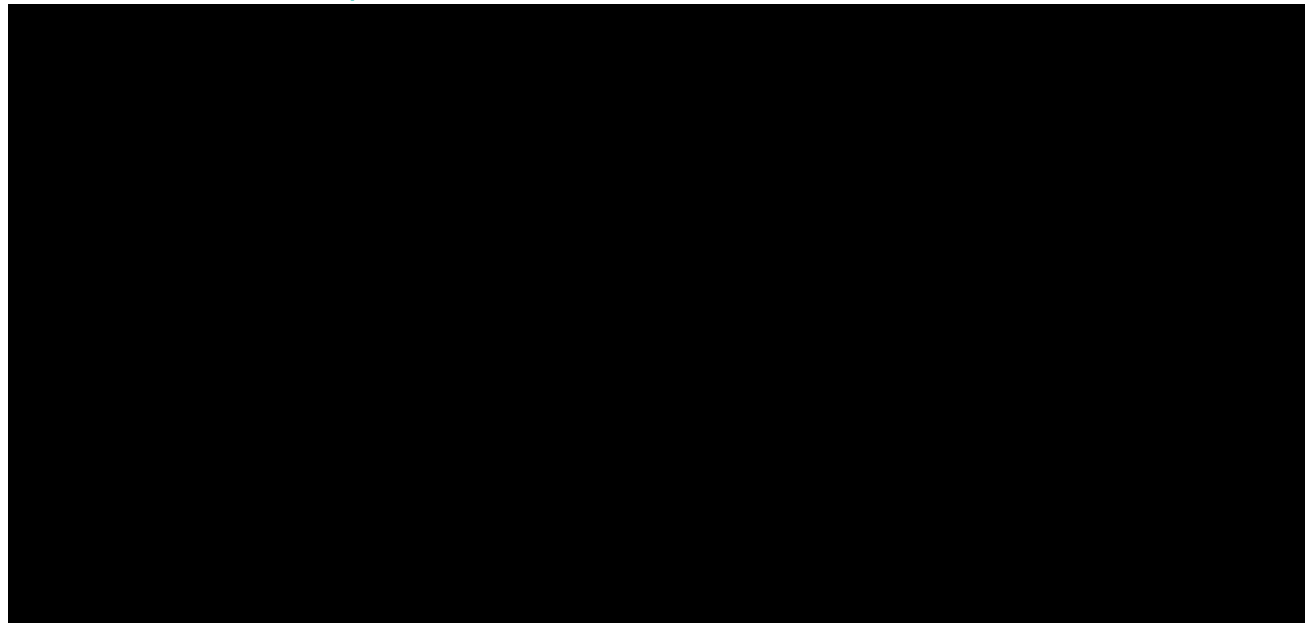


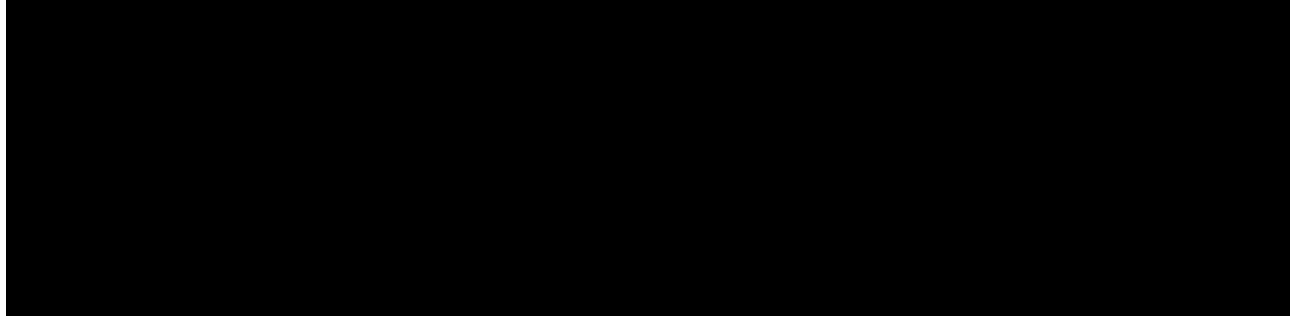
Barangaroo South
Hickson Road Upgrade Works Stages 1 and 2



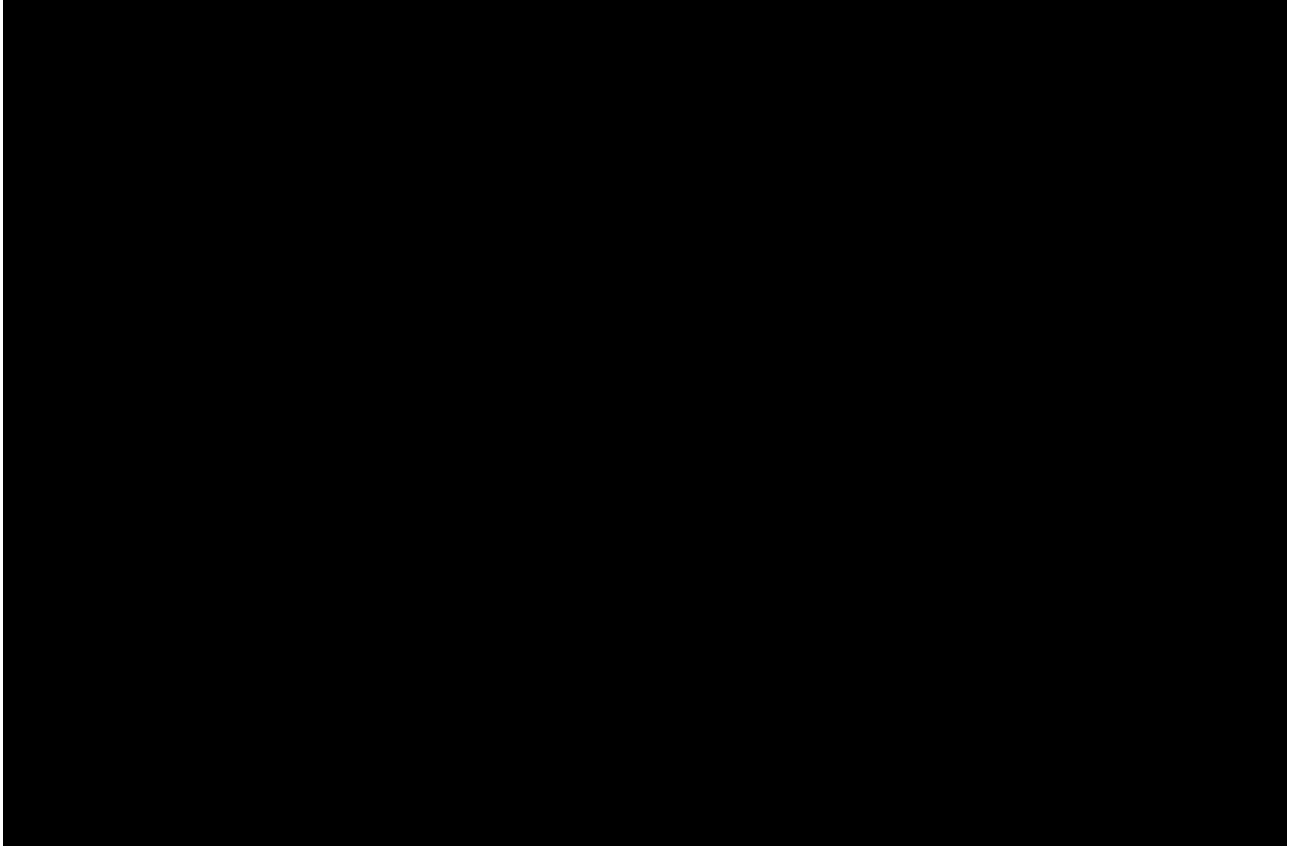


2.2 Preliminaries & Supervision Fee





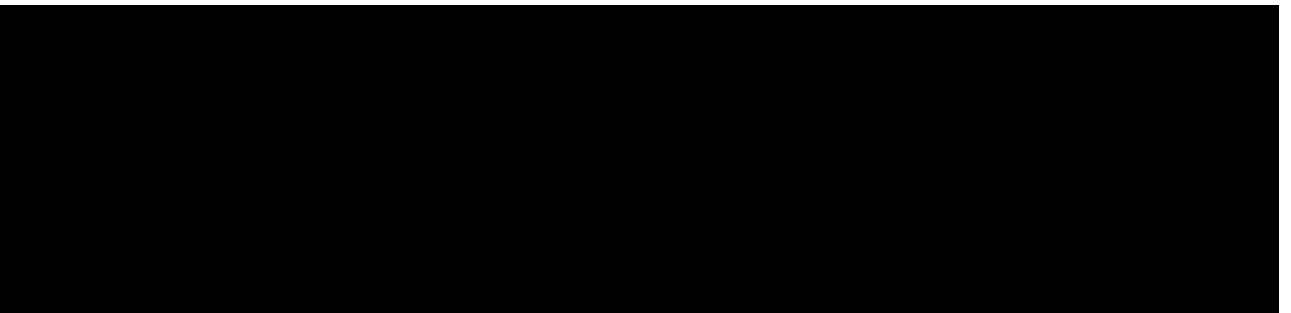
2.3 Exclusions

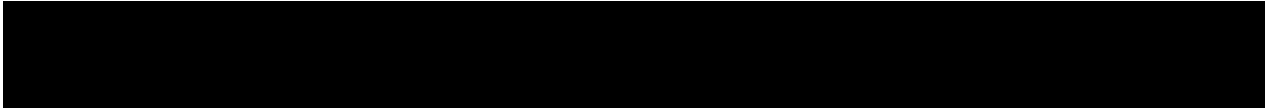


3.0 Assumptions & Clarifications

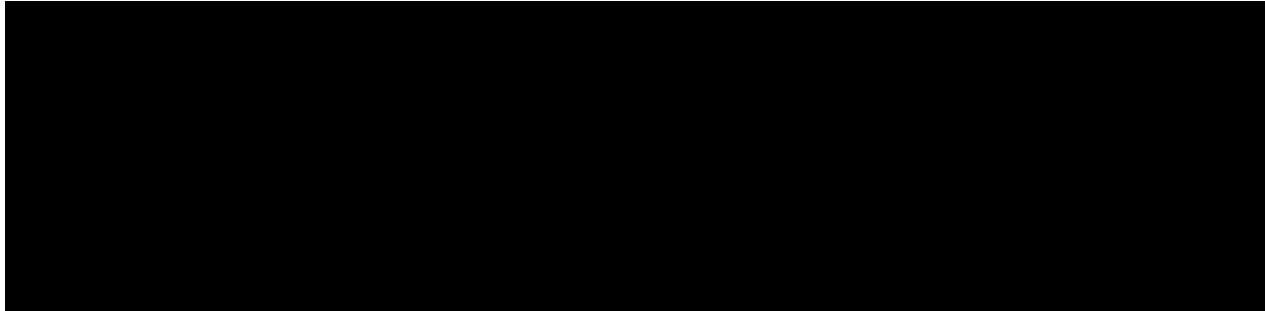


3.1 Planning Approvals

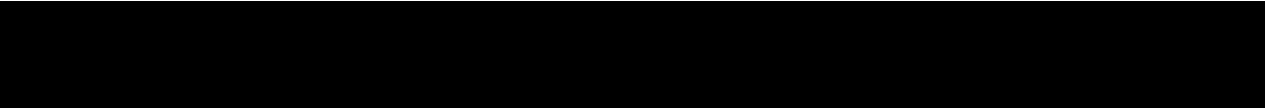




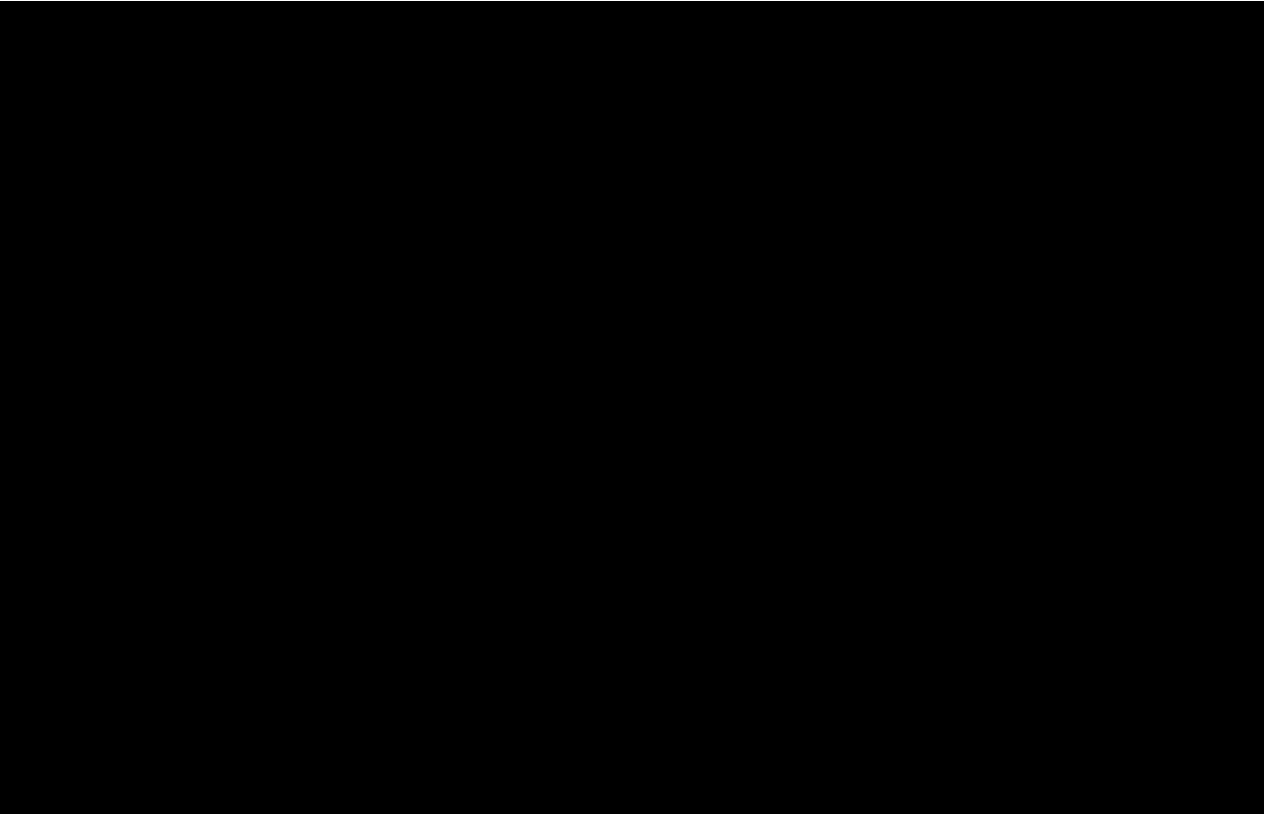
3.2 Lendlease Millers Point Scope Clarification



3.3 Design

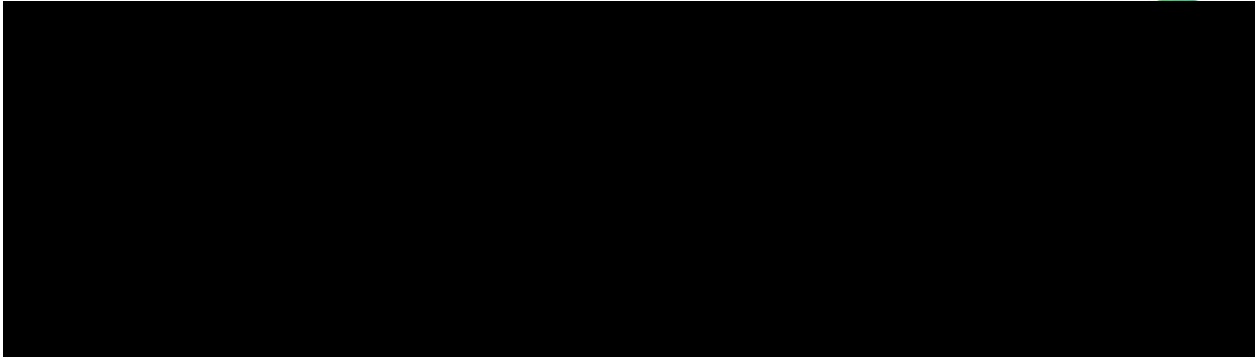


3.4 Construction Programme and Staging

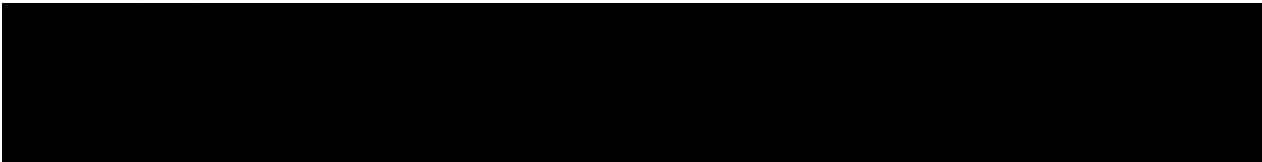


4.0 Authorities

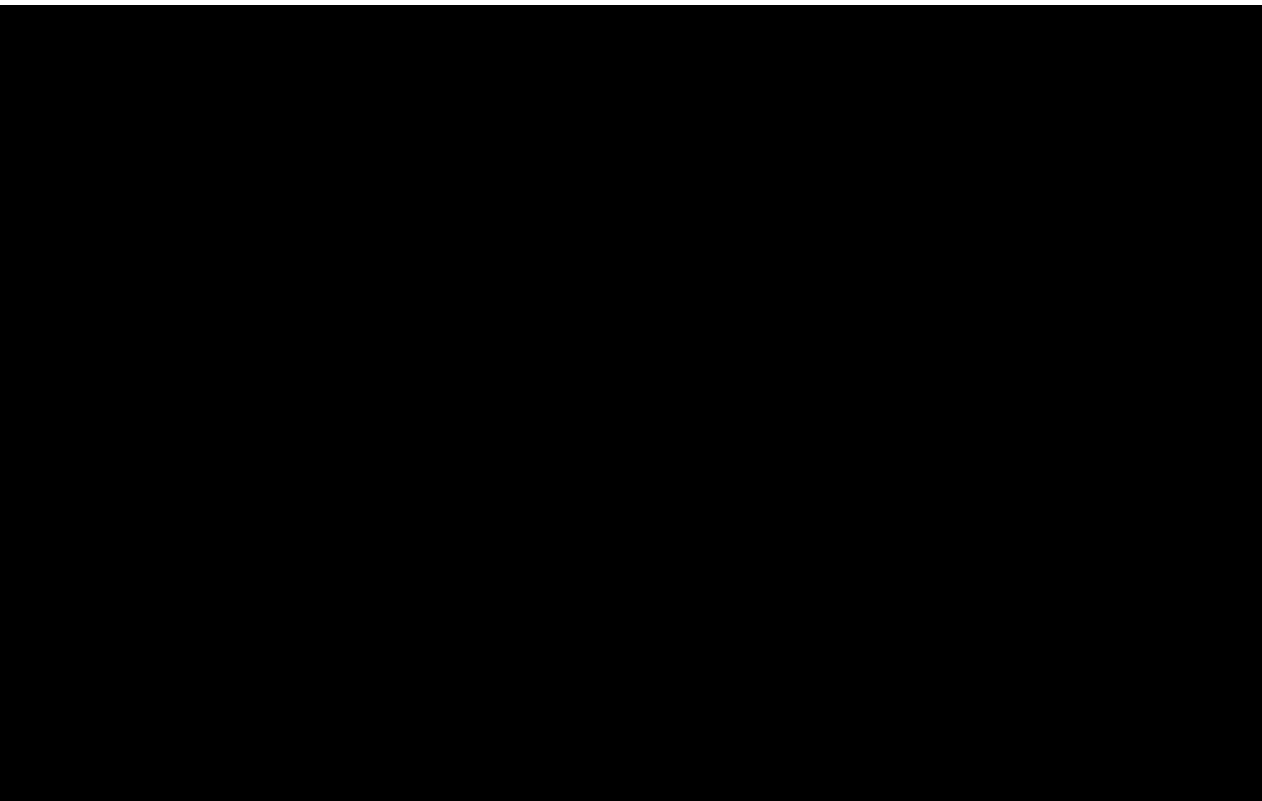
4.1 The City of Sydney Council (CoSC)
Roadworks



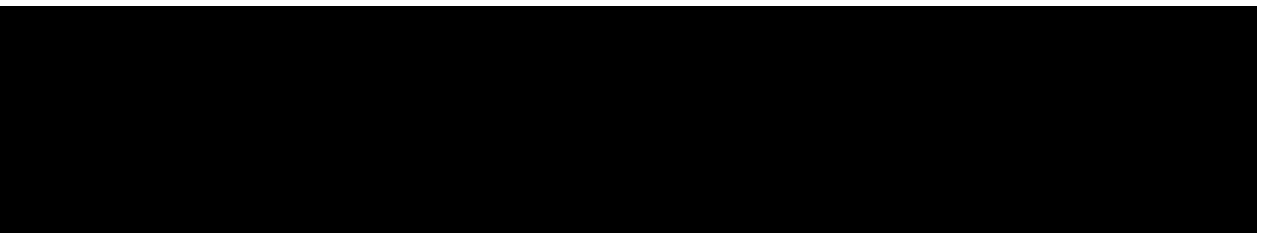
Street Lighting



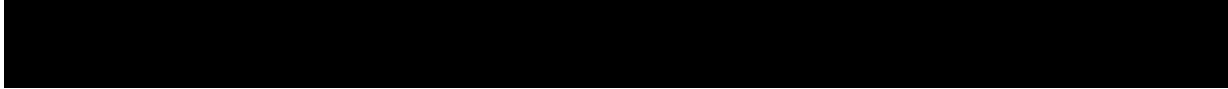
4.2 Sydney Water



4.3 Roads and Maritime Services (RMS)



Barangaroo South
Hickson Road Upgrade Works Stages 1 and 2

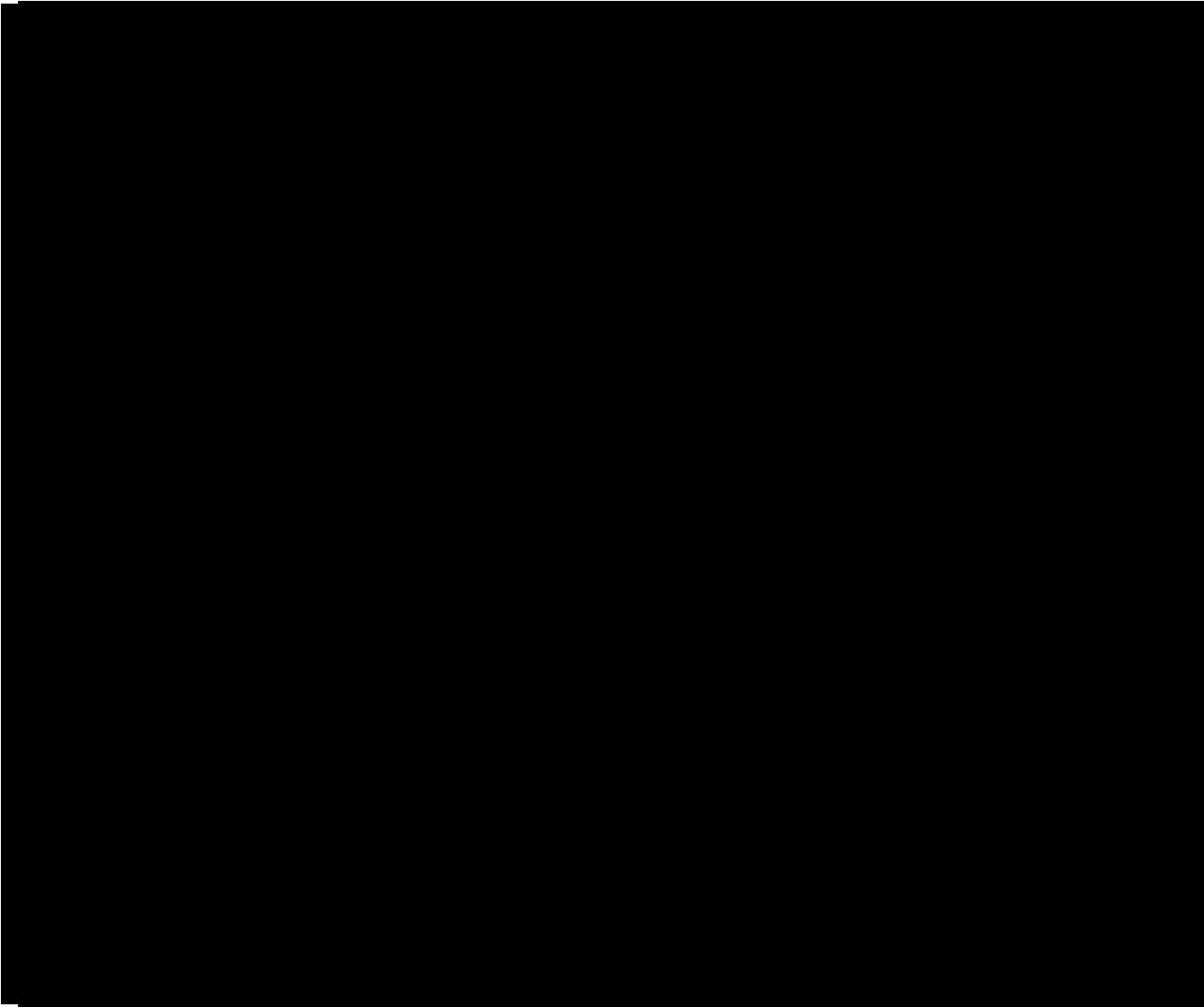


4.4 Ausgrid, Jemena, Optus/Telstra,





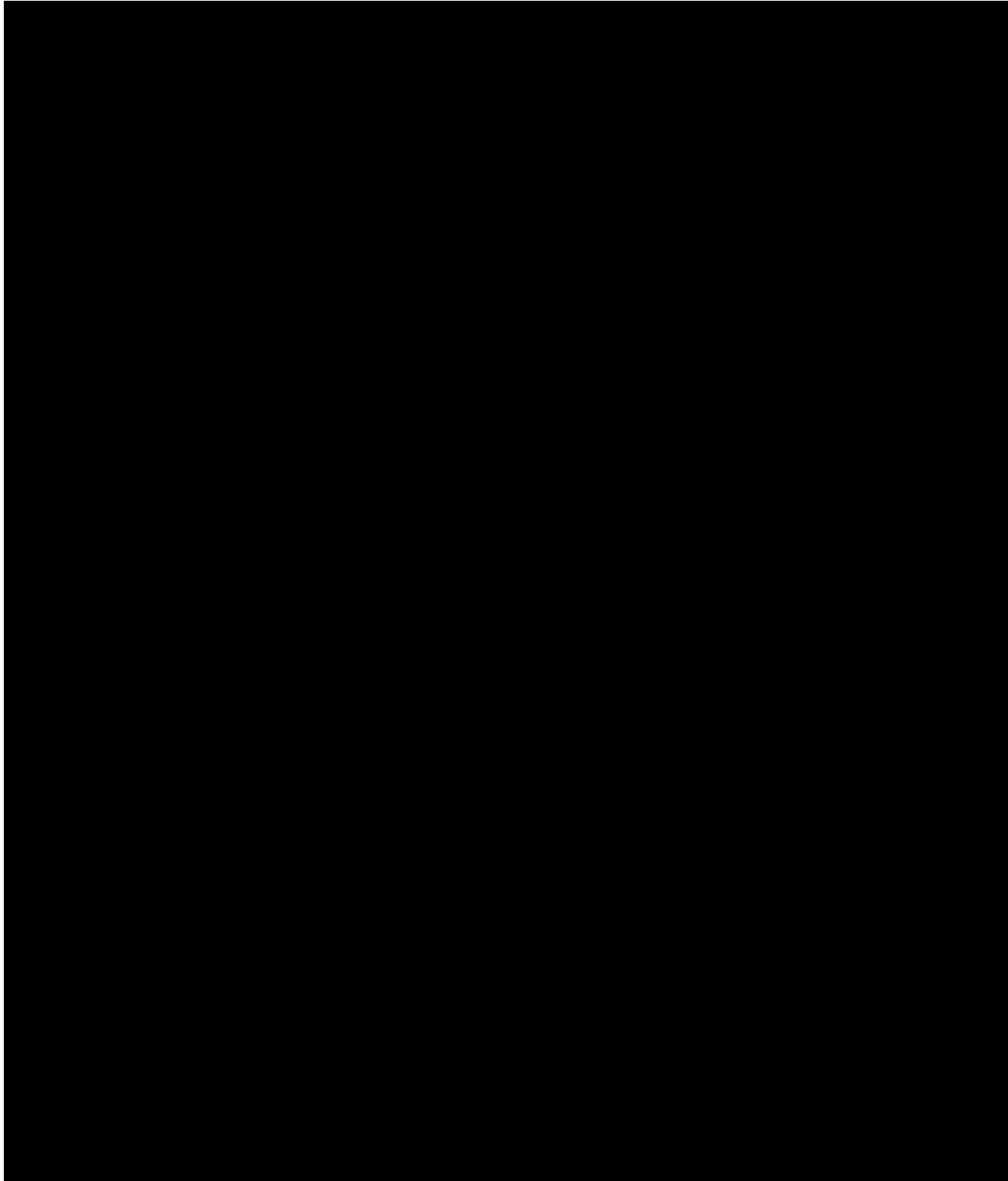
5.0 Development, Project and Construction Management Team

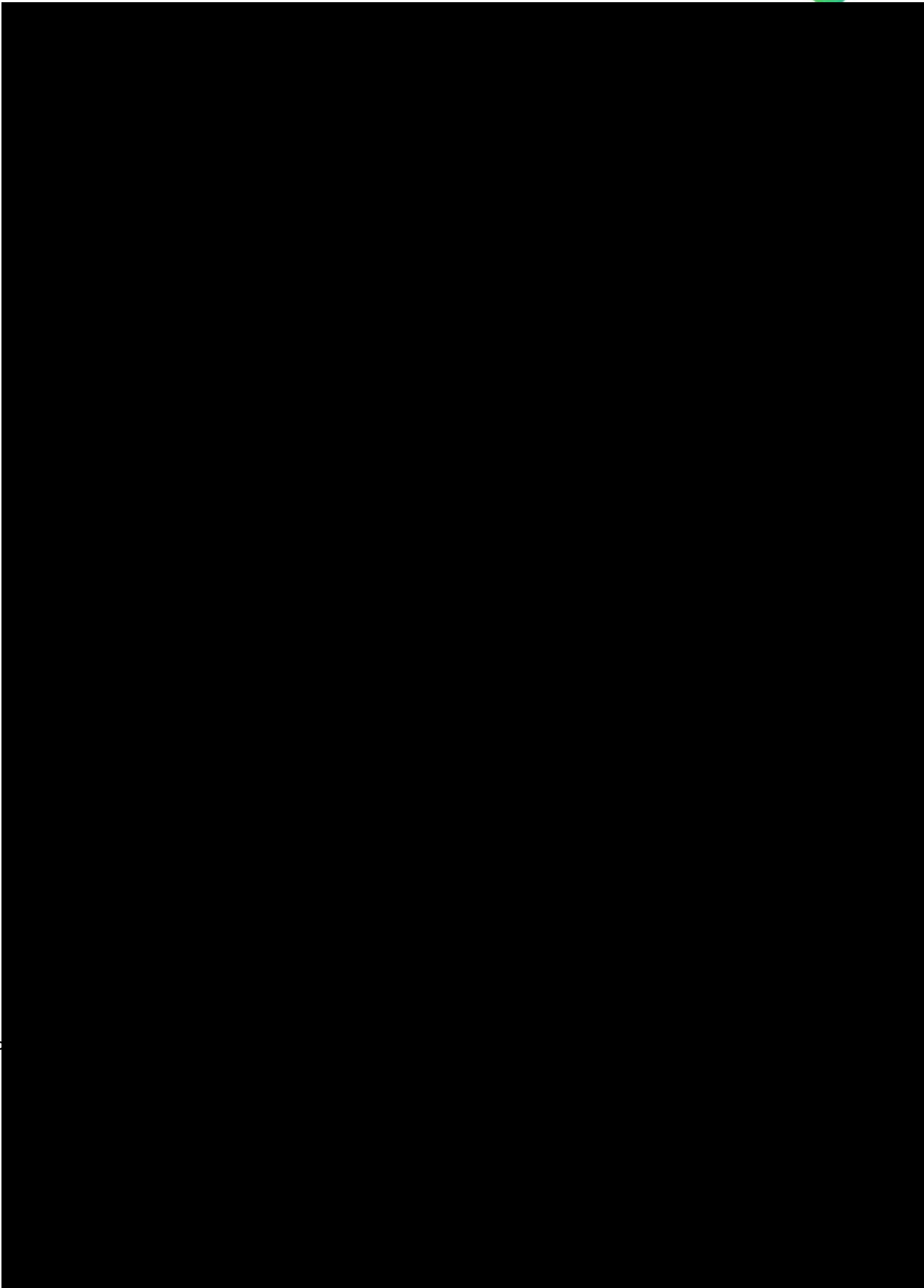




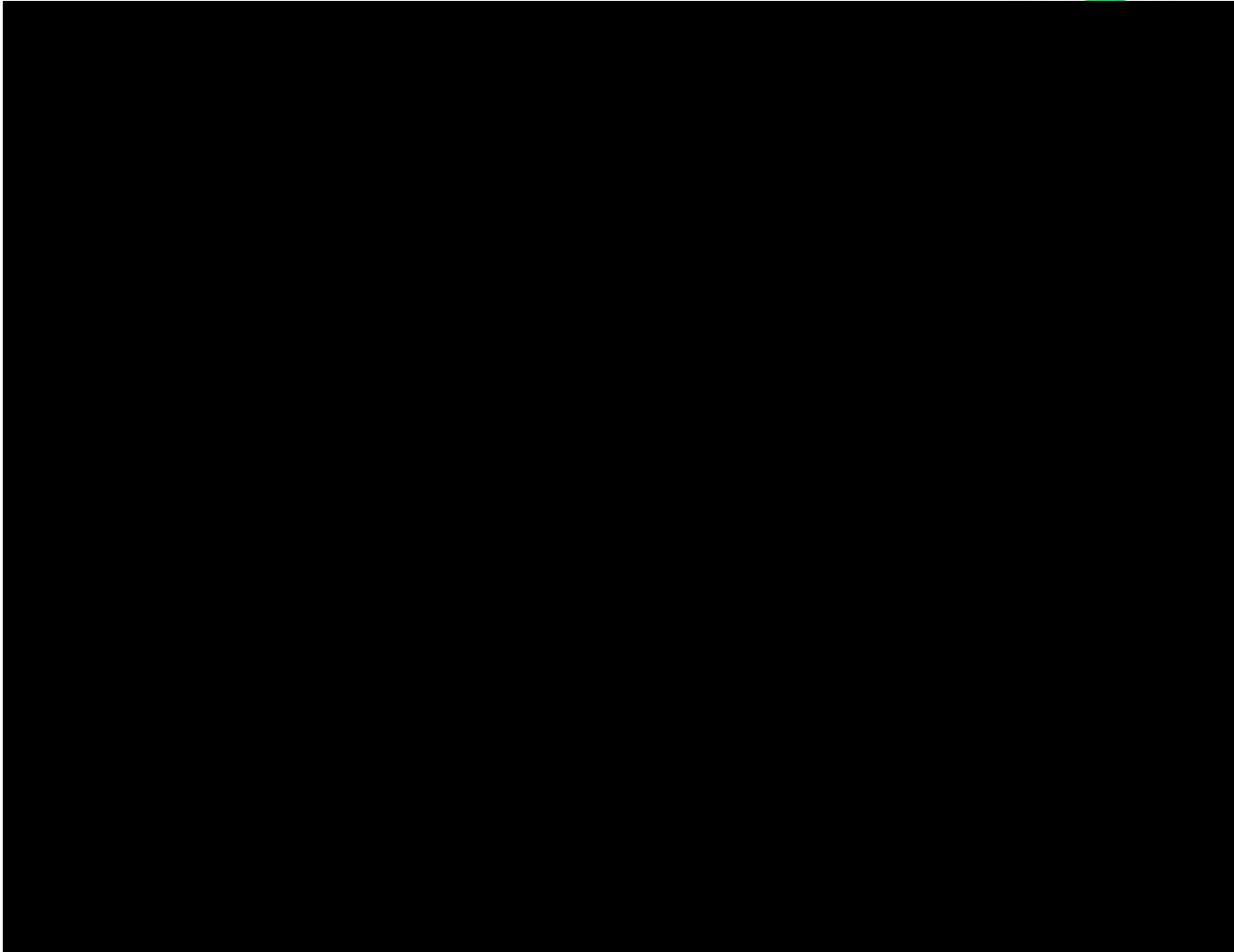
Section 2 – SCOPE of WORKS

6.0 PDA Schedule 14

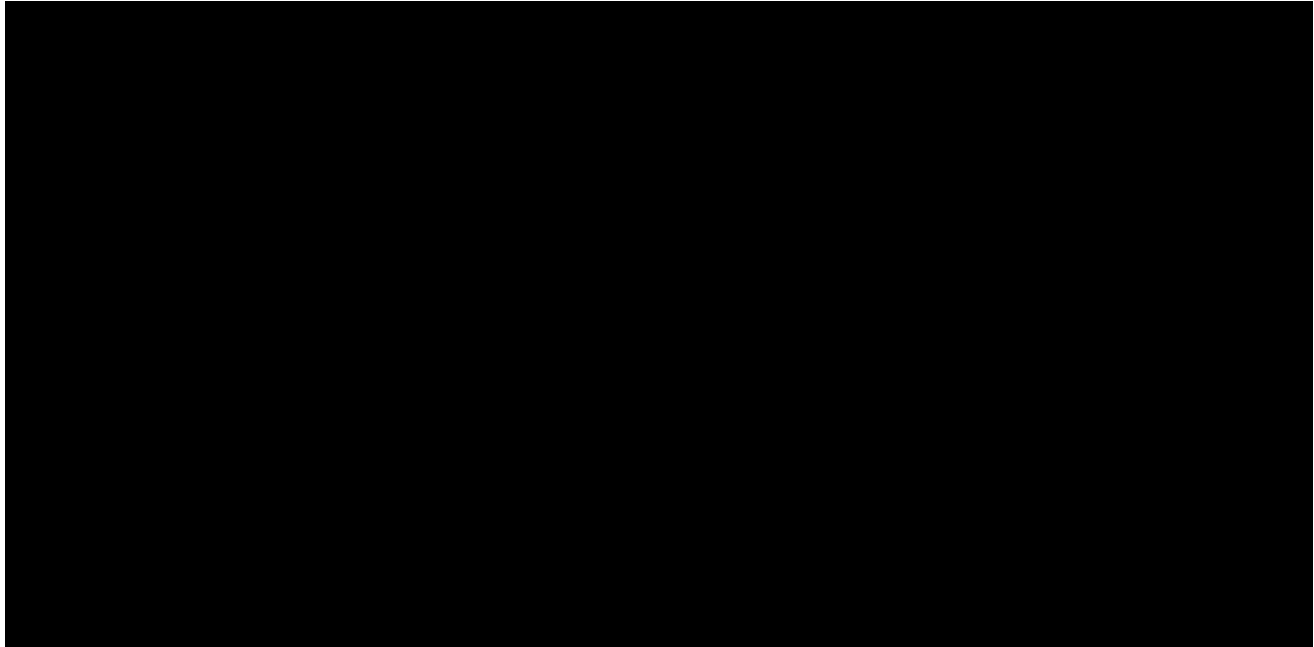




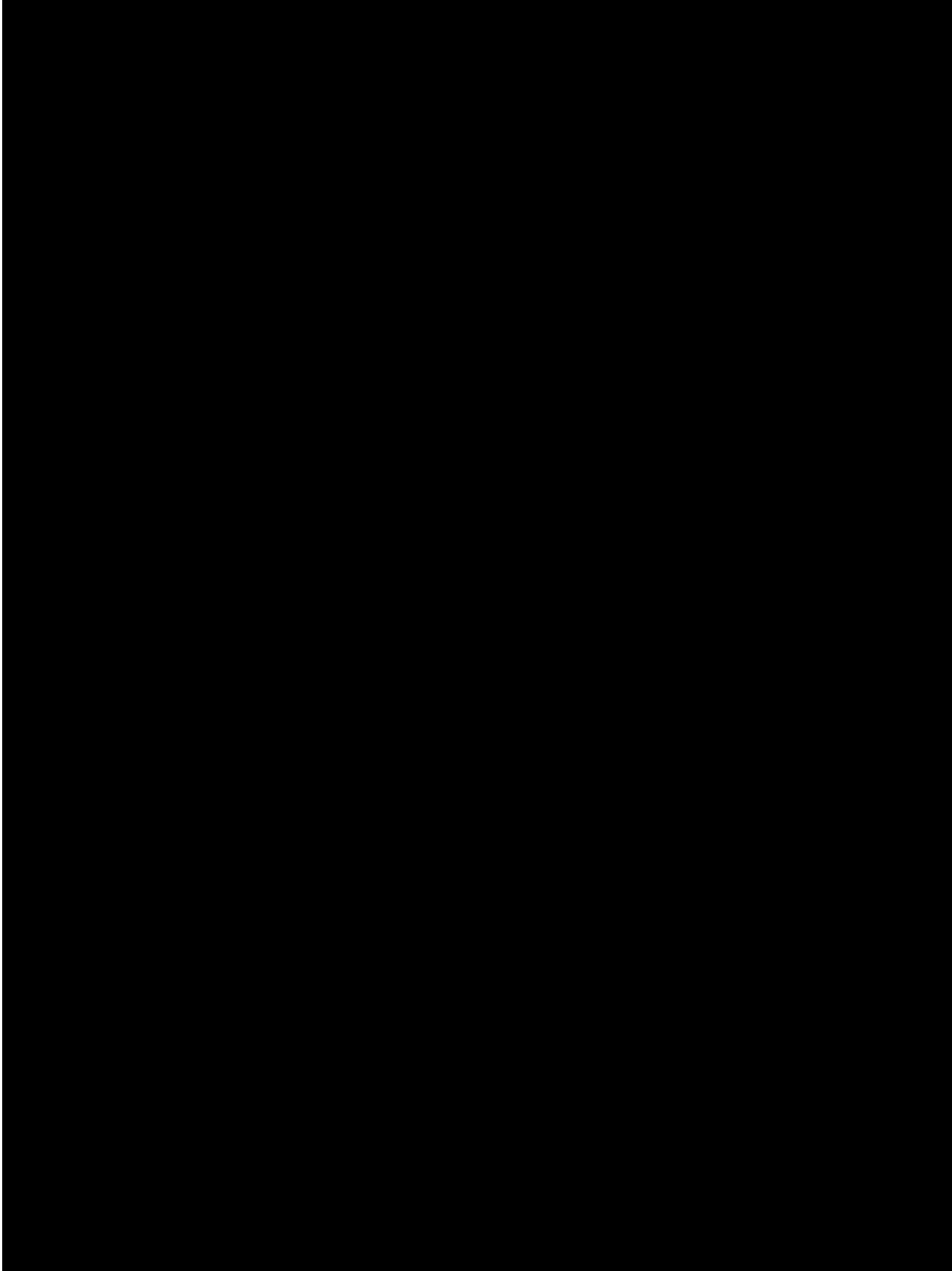
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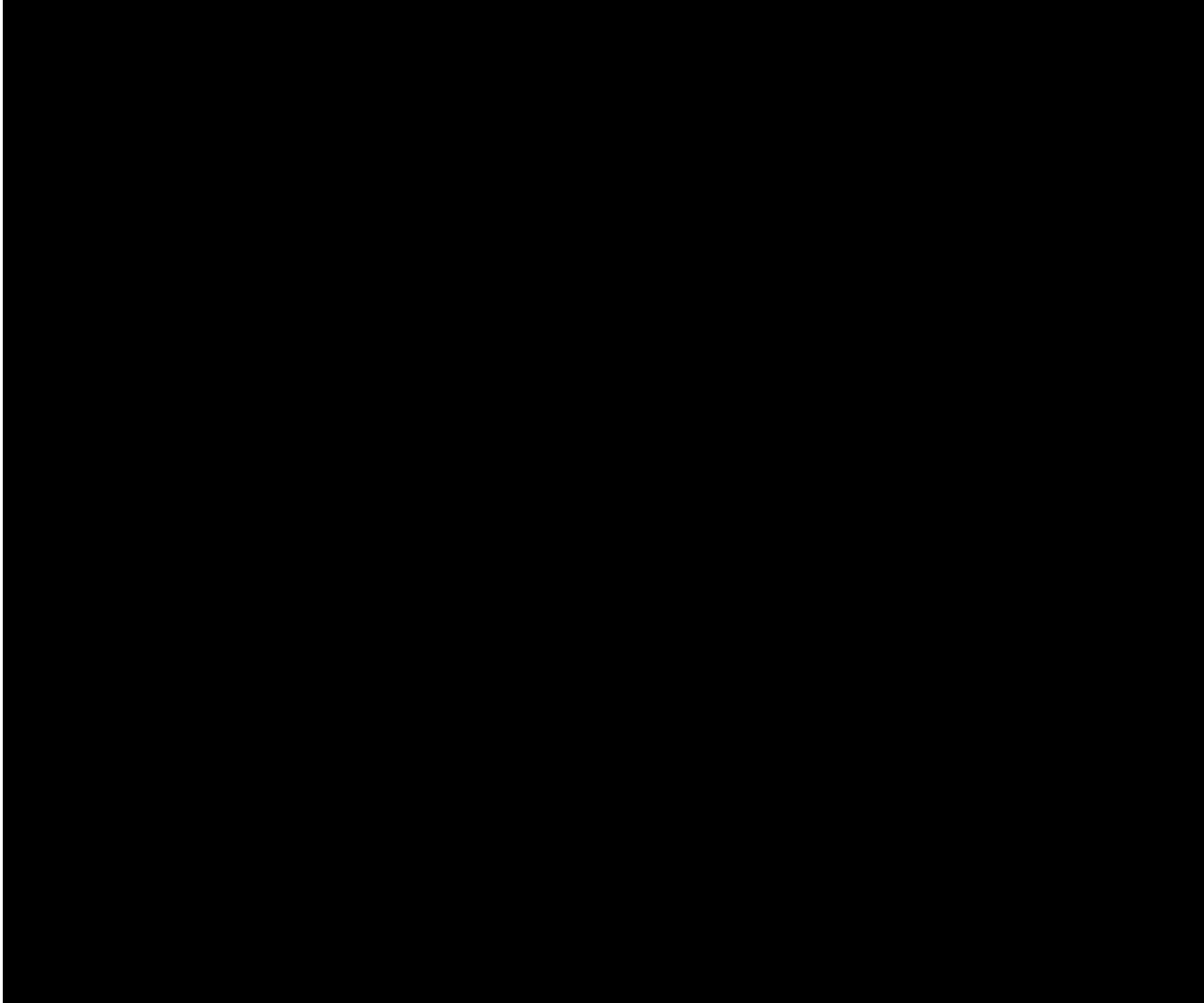
7.0 Design Criteria



Barangaroo South
Hickson Road Upgrade Works Stages 1 and 2

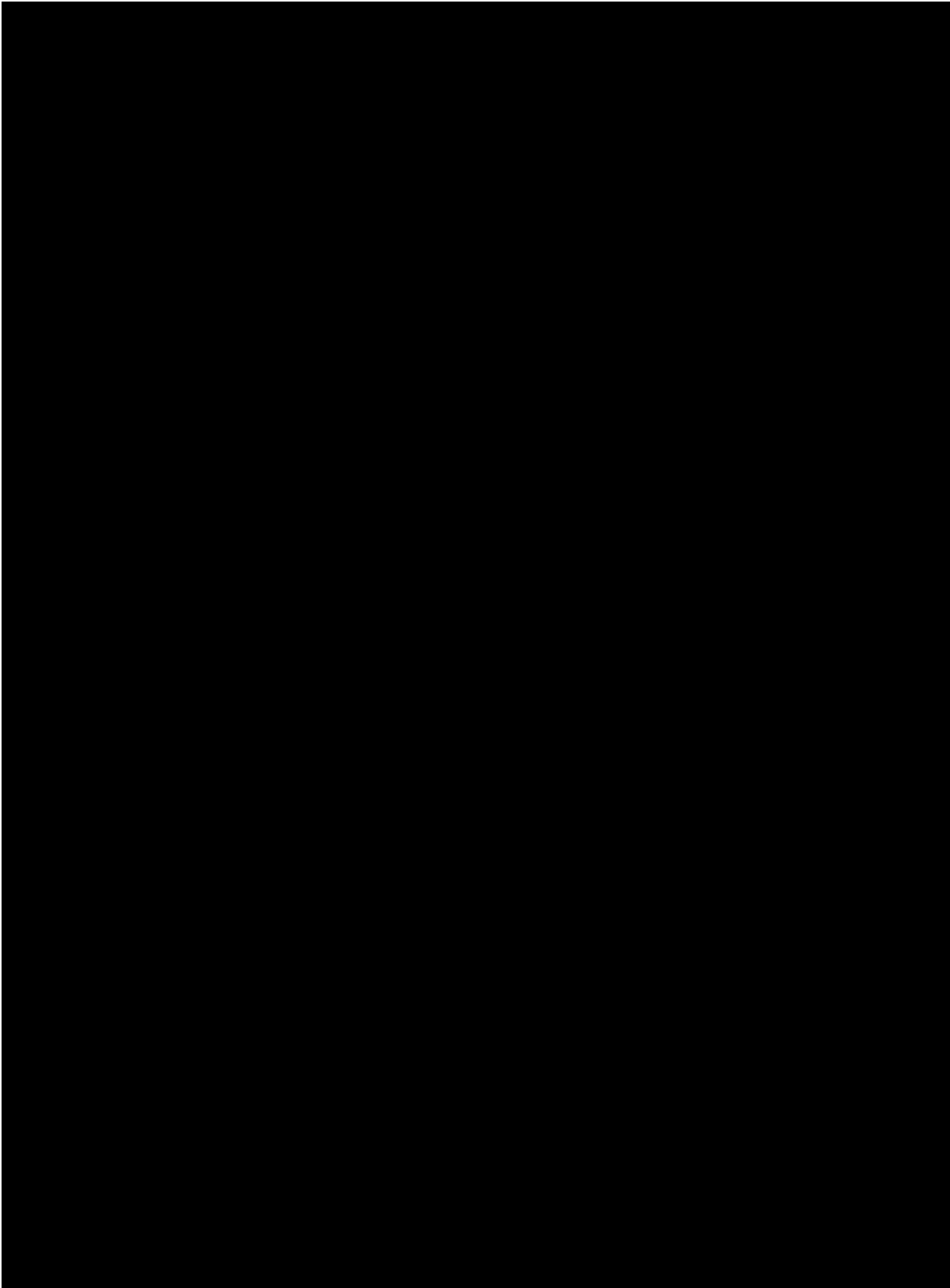


Barangaroo South
Hickson Road Upgrade Works Stages 1 and 2

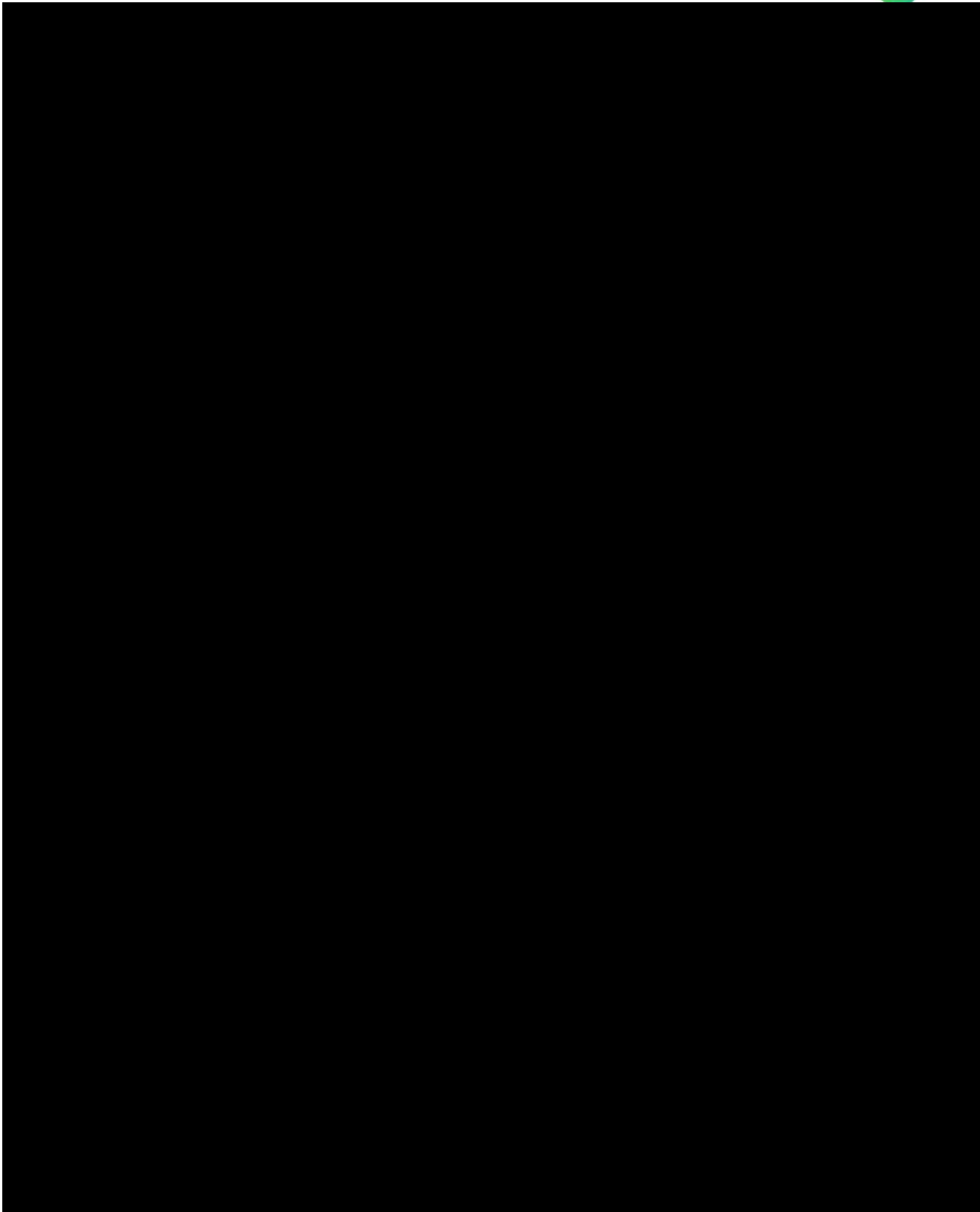




Section 3 - DESIGN DOCUMENTATION



Barangaroo South
Hickson Road Upgrade Works Stages 1 and 2



ANNEXURE
General Conditions of Contract

PART D

NOT USED

ANNEXURE
General Conditions of Contract

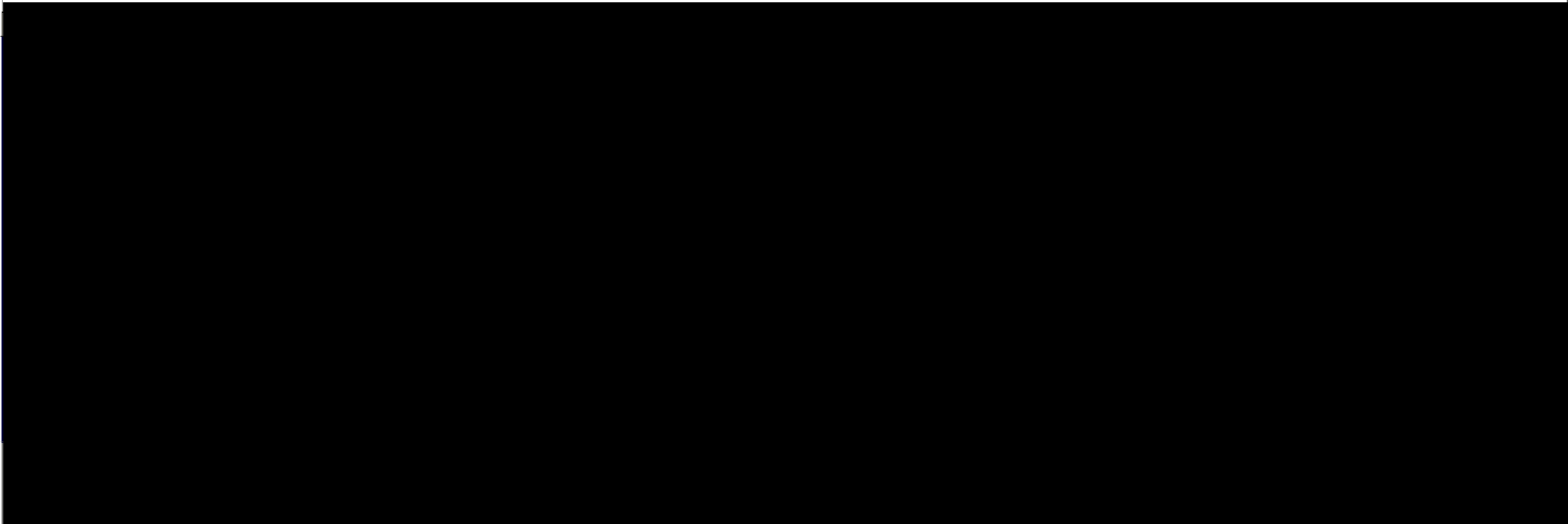
PART E

CONTRACTORS PROGRAMME

Hickson Rd Upgrade



Hickson Rd Upgrade



- Delivery
- Remaining Level of Effort
- Actual Work
- Critical Remaining Work
- Milestone

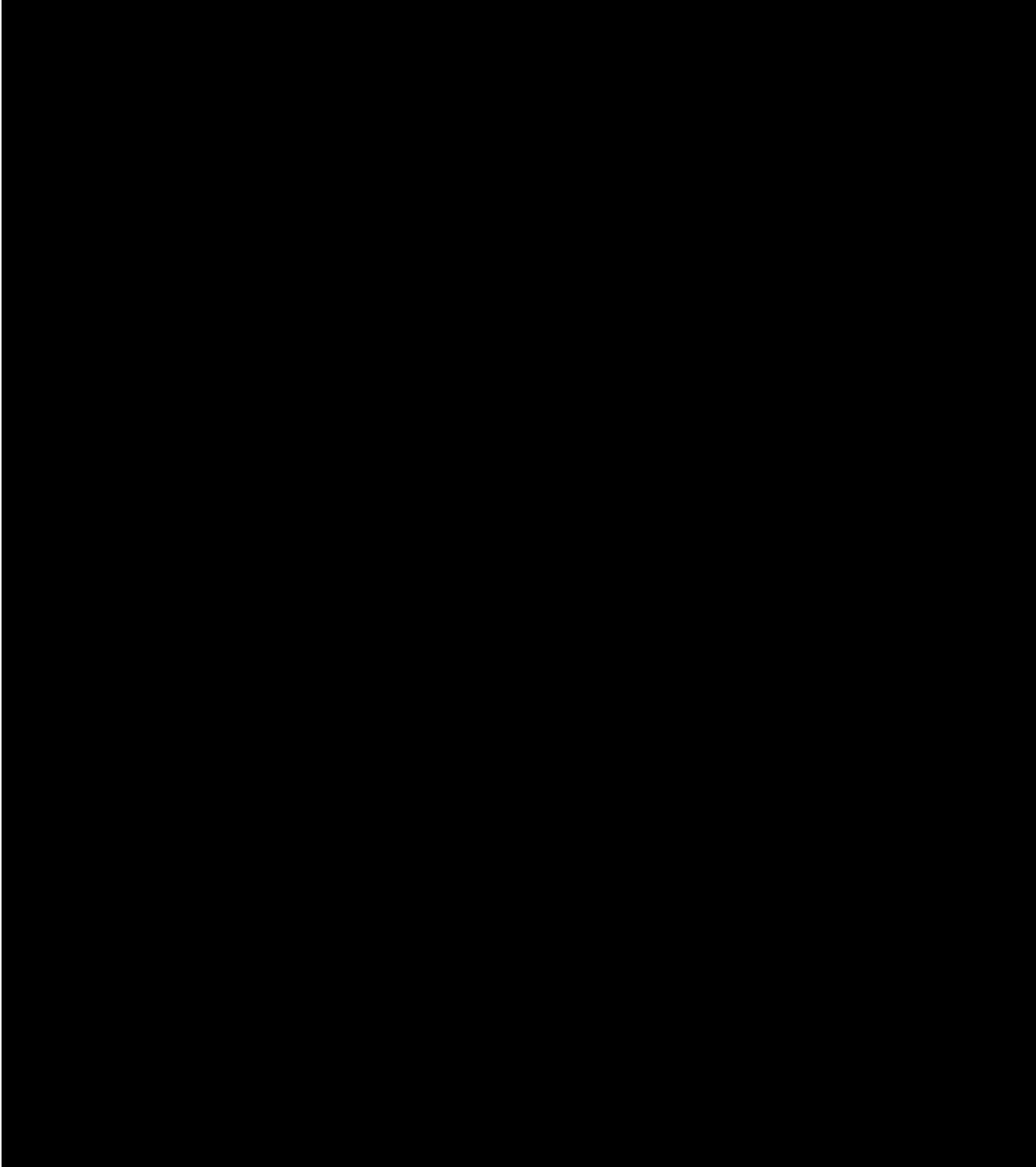
Date	Revision	Checked	Approved
20-Jun-17	Contract	DE	

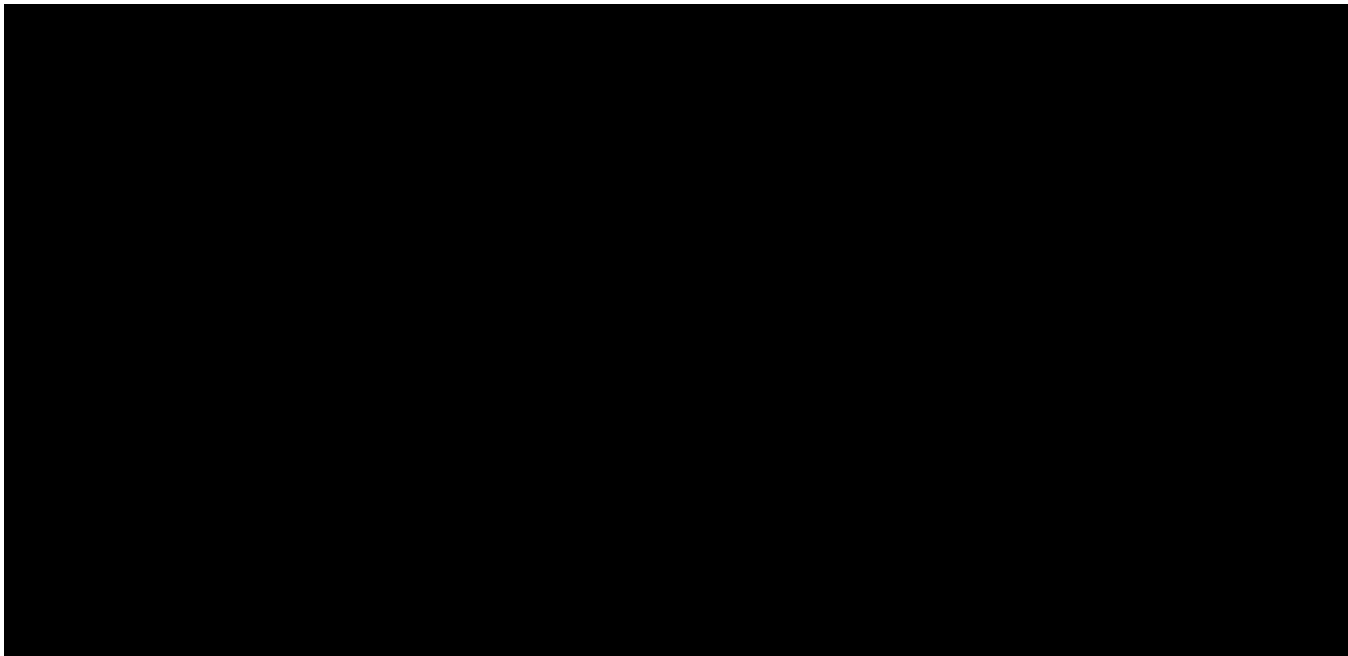
Hickson Rd Contract Programme 20/06/17

Project: BAR-HRU-SD-02
Layout: Contract Layout - Client
Data Date: 03-Jul-16
Run Date: 20-Jun-17
Page: 2 of 2
By:elld490

VARIATION VALUATION FORMULA

(Clause 32.5)





ANNEXURE
General Conditions of Contract

PART G

INDEPENDENT CERTIFIER DEED



HERBERT
SMITH
FREEHILLS

Deed

Hickson Road Upgrade Works

Independent Certifier Deed

Lendlease (Millers Point) Pty Ltd

Barangaroo Delivery Authority

Lendlease Building Pty Limited

Altus Group Consulting Pty Limited



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The deed

Independent Certifier Deed

Date ►

Between the parties

Developer **Lendlease (Millers Point) Pty Limited**
ACN 127 727 502 of Level 14, Tower 3, International Towers Sydney,
Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000
(Developer)

Authority **Barangaroo Delivery Authority**
a NSW government agency constituted under the Barangaroo
Delivery Authority Act 2009 (NSW) of Level 21, AON/Maritime Trade
Towers, 201 Kent Street, Sydney NSW 2000
(Authority)

Builder **Lendlease Building Pty Limited**
ABN 97 000 098 162 of Level 14, Tower 3, International Towers
Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo
NSW 2000
(Builder)

Independent Certifier **Altus Group Consulting Pty Limited**
ABN 34 091 512 471 of 1 Market Street, Sydney NSW 2000
(Independent Certifier)

Background

- 1 The Developer and the Authority have Authority agree to engage the Builder to carry out the Upgrade Works.
- 2 The D&C Contract contemplates that an independent certifier will be engaged to carry out the Services.
- 3 The Developer and the Authority wish to engage an independent certifier to carry out the Services.
- 4 The Independent Certifier has represented to the Developer and the Authority that it has the experience and expertise in the carrying out of services equivalent to the Services.
- 5 The Independent Certifier has agreed to carry out the Services and its other obligations arising out of or in any way in connection with this Deed in accordance with the terms and conditions of this Deed.
- 6 The Builder enters into this Deed only for the purposes of receiving the benefit of certain acknowledgements and warranties to be given by the Independent Certifier.

This deed witnesses as follows:



1 Definitions and interpretation

1.1 Definitions

The meanings of the terms used in this deed are set out below.

Term	Meaning
Business Days	a day (other than a Saturday or Sunday) on which banks are generally open for business in Sydney excluding public holidays in each of those places.
Commencement Date	The earlier of the date that this Deed is executed by all of the parties to this Deed and the date of the first provision of the Services.
Corporations Act	<i>Corporations Act 2001</i> (Cth).
Deed	this deed.
Direction	includes agreement, approval, assessment, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request or requirement.
Dispute Notice	has the meaning given in clause 12.2.
Disputing Party	in respect of each dispute: <ol style="list-style-type: none">1 the party that issues a Dispute Notice; and2 any other party to this Deed who disputes the contents of that Dispute Notice.
D&C Contract	means the design and construct contract dated on or about the date of this deed between the Developer, the Authority and the Builder.
Good Industry Practice	the exercise of that degree of skill, diligence and prudence which would reasonably and ordinarily be expected from a prudent, experienced, properly qualified and competent person appointed



Term	Meaning
	and carrying out the role of independent certifier for a project of the size, scope and complexity of the Upgrade Works and seeking in good faith to comply with its contractual obligations under this deed.
Insolvency Event	<p>in respect of the Independent Certifier:</p> <ol style="list-style-type: none">1 being in liquidation or provisional liquidation or under administration;2 having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property;3 failing to comply with a statutory demand under section 459F(1) of the Corporations Act);4 being unable to pay its debts or otherwise insolvent;5 ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason;6 taking any step that could result in the person becoming insolvent under administration (as defined in section 9 of the Corporations Act);7 entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors; or8 any event analogous to those events set out in paragraphs 1 to 7 above.
Key Personnel	any of the people named in Schedule 1.
Related Entity	the meaning it has in the Corporations Act.
Schedule	a schedule to this Deed.
Senior Representatives	<ol style="list-style-type: none">1 for the Developer, ██████████;2 for the Authority, ██████████; and3 for the Independent Certifier, ██████████. <p>provided that each party may replace its representative with another member of its senior management by written notice to the other parties.</p>
Services	<ol style="list-style-type: none">1 all of the powers, obligations, duties, functions, services and tasks conferred on, or contemplated to be carried out by the Independent Certifier under this Deed and the D&C Contract



Term	Meaning
	<p>(including the functions as described in Schedule 3) as varied from time to time in writing by the parties; and</p> <p>2 without limiting paragraph 1 above, all other things and tasks not described in this Deed and the D&C Contract if those things or tasks should have been reasonably anticipated by an experienced and professional provider of services equivalent to the Services as being necessary for the carrying out of the Services or which are otherwise capable of inference from this Deed and the D&C Contract.</p>
Termination Event	<p>1 the occurrence of an Insolvency Event;</p> <p>2 the Independent Certifier fails or refuses to perform all or any part of its obligations, duties and functions under this Deed and the D&C Contract within the time required under this Deed or the D&C Contract (as applicable); or</p> <p>3 without limiting paragraph 2 of this definition, the Independent Certifier commits a material breach of any of its obligations, duties and functions under this Deed and fails promptly to remedy such breach after notice jointly from the Developer and the Authority to the Independent Certifier requesting it to do so.</p>
Upgrade Works	means the work which the Builder is or may be required to carry out and complete under the D&C Contract and includes variations, remedial work, construction plant and temporary works,

1.2 Interpretation

- (a) In this Deed:
- (1) a reference to this or any other document includes the document as varied or replaced regardless of any change in the identity of the parties;
 - (2) a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Deed all of which are deemed part of this Deed;
 - (3) a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
 - (4) a reference to the singular includes the plural and vice versa;
 - (5) headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Deed;
 - (6) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
 - (7) where the expression 'including' or 'includes' is used it means 'including but not limited to' or 'including without limitation';



- (8) a reference to a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- (9) a reference to a person includes the legal personal representatives, successors and permitted assigns of that person; and
- (10) a reference to any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

1.3 Terms defined in D&C Contract

Capitalised terms that are not defined in clause 1.1 and that are defined in the D&C Contract have the same meaning in this Deed.

1.4 Rule of construction

In the interpretation of this Deed, no rule of construction applies to the disadvantage of the party preparing this Deed on the basis that it prepared this Deed or any part of it.

2 Appointment

2.1 Engagement of Independent Certifier

The Independent Certifier is jointly engaged by the Developer and the Authority as an independent certifier to carry out the obligations, functions, duties and services of an independent certifier in accordance with, and for the purposes of, the D&C Contract, which obligations, functions, duties and services include the carrying out of the Services.

2.2 Services

In carrying out the Services the Independent Certifier must:

- (a) comply with all Laws;
- (b) act as an expert and not as an arbitrator;
- (c) at all times act independently of the Developer, Authority, and their respective Related Entities (including, in the case of the Developer, the Builder);
- (d) at all times act impartially, reasonably, fairly, honestly and with due expedition and without delay (and in any event within the time requirements for the carrying out of its obligations specified in this Deed and the D&C Contract);
- (e) exercise all reasonable skill, care and diligence expected of a properly qualified and competent professional rendering services of an equivalent nature to the Services and experienced in projects of a similar size, scope and complexity as the Upgrade Works and in accordance with Good Industry Practice;
- (f) not purport to waive or vary any requirements in the D&C Contract (and acknowledges and agrees that it is not in any way authorised or entitled to do so);



- (g) not purport to discharge or release a party from any of its obligations arising out of the D&C Contract (and acknowledges and agrees that it is not in any way authorised or entitled to do so);
- (h) provide a copy of any certificate or determination made in the course of performing the Services to each of the Developer and the Authority on the same day as the issue of such certificate or determination;
- (i) ensure that only Key Personnel carry out the Services;
- (j) carry out the Services within the time limits specified in the D&C Contract and if no time limit is specified for the performance of a particular Service then by the date that is 10 Business Days after the date on which the requirement to perform the Service arose.

The Independent Certifier may appoint different persons to be the Key Personnel for the purposes of this Deed with the prior written approval of the Developer and the Authority. The Developer and the Authority must not unreasonably withhold their approval if the persons nominated by the Independent Certifier hold the same or substantially similar position, skills and qualifications as the Key Personnel named in Schedule 1.

2.3 Notifications

The Independent Certifier agrees to promptly notify the Developer and the Authority if it becomes aware in the course of performing the Services:

- (a) that any matter stated or certified by the Builder or certificate provided under the D&C Contract is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which in its reasonable opinion:
 - (1) may materially or adversely affect the Builder's ability to achieve Practical Completion of the Upgrade Works by the Date for Practical Completion of those works;
 - (2) it considers to be, in the context of the Upgrade Works, of material interest to the Developer and the Authority;
 - (3) may involve a material breach of the D&C Contract; or
 - (4) may involve a material dispute between any party to the D&C Contract or any other person in relation to the Upgrade Works.

2.4 Binding certificate

The Developer and the Authority acknowledge and agree that all certificates or determinations provided by the Independent Certifier under the D&C Contract shall, in the absence of manifest error, be final and binding on the Developer and the Authority.

3 Term

3.1 Commencement

The engagement of the Independent Certifier commences on the Commencement Date and, unless terminated earlier under clause 3.2, continues until the Independent Certifier has completed and discharged all of its duties and functions under this Deed.



3.2 Termination

This Deed will terminate immediately on:

- (a) the termination of the D&C Contract (in which case this Deed terminates automatically); or
- (b) termination of this Deed in accordance with clause 15, save in relation to any matter which remains outstanding and in progress as at the date of termination.

4 Independent Certifier's agreement and acknowledgements

The Independent Certifier agrees and acknowledges the Developer, the Authority and the Builder that:

- (a) it has received a copy of the D&C Contract;
- (b) its obligations under this Deed extend to and include the obligations, functions, duties and services of the 'Independent Certifier' (as that term is defined in the D&C Contract) arising, described or otherwise referred to under the D&C Contract ; and
- (c) it owes a duty of care and professional responsibility to the Developer, the Authority and the Builder in connection with the performance of the Services; and
- (d) the Developer and the Authority:
 - (1) are entitled to, and will, rely on:
 - (A) the skill and expertise of the Independent Certifier in performing the Services; and
 - (B) any certificate the Independent Certifier signs or gives; and
 - (2) may suffer loss if the Independent Certifier does not perform the Services in accordance with this Deed; and
- (e) it must, in exercising the functions of the 'Independent Certifier' (as that term is defined in the D&C Contract) under the D&C Contract:
 - (1) act honestly and fairly and with a degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a practising firm of consultants experienced in the performance of the same or similar services as are required to be performed by the Independent Certifier under this deed;
 - (2) act within the time prescribed under the D&C Contract or where no time is prescribed, within a reasonable time; and
 - (3) arrive at a reasonable measure or value of work, quantities or time.



5 Representations and warranties

5.1 Authority to act

The Independent Certifier represents and warrants to the Developer and the Authority that:

- (a) if it is a corporation, it is duly registered and validly existing under the laws of the place of its registration;
- (b) it is not a partner, joint venturer or agent of the Developer or the Authority;
- (c) other than as expressly set out in this Deed or any other agreement between the Independent Certifier and either or both of the Developer and the Authority has no right or authority to give any directions to the Developer or the Authority; and
- (d) it has no authority to waive any terms or conditions of the D&C Contract, or to amend, vary or discharge or release the Developer or the Authority from any of their respective obligations under the D&C Contract.

5.2 Conflicts of interest

The Independent Certifier represents and warrants that:

- (a) it has disclosed all contractual relationships that it has in connection with the Upgrade Works to the Developer and the Authority;
- (b) at the date of its execution and delivery of this Deed, no conflict of interest exists or is likely to arise in connection with the performance of its obligations and the discharge of its duties and functions under this Deed; and
- (c) if, during the term of this Deed, any such conflict or risk of conflict of interest arises, the Independent Certifier will notify the Developer and the Authority immediately in writing of that conflict or risk of conflict and comply with all reasonable requests or directions of the Developer and the Authority jointly in relation to such conflict or risk of conflict.

5.3 Knowledge of requirements

The Independent Certifier represents and warrants to the Developer, the Authority and the Builder that:

- (a) it has the skill, experience and ability to perform the Services;
- (b) it has read, and is familiar with, the terms of the D&C Contract in so far as they relate to the Services;
- (c) without limiting clause 5.3(a), it has informed itself of all time limits and other requirements of the D&C Contract for any function that the Independent Certifier must perform pursuant to its engagement under this Deed;
- (d) it has informed itself of the nature of the work necessary to perform the Services and (so far as possible) the means of access to and facilities on the land on which the Upgrade Works are to be carried out, including any restrictions on that access; and
- (e) it has satisfied itself that the fee payable under this Deed is sufficient having regard to the costs that it will incur in complying with its obligations under this Deed.



6 Change to, or suspension of, Services and appointment of substitute Independent Certifier

6.1 Services changed

The Developer and the Authority may give the Independent Certifier a notice jointly instructing the Independent Certifier:

- (a) to change a Service;
- (b) not to carry out a Service;
- (c) to carry out a Service that is not listed in Schedule 3 at the date of this Deed.

The Independent Certifier must comply with that notice.

6.2 Meeting of the Developer and the Authority

- (a) If the Developer or the Authority are of the opinion that the Independent Certifier is not performing any of the Services in accordance with this Deed, that party may call a meeting with the other party by giving a notice of the meeting (to be held at least 2 Business Days after the notice is given to the other party) to decide on appropriate action to resolve the issue. The Developer and the Authority must ensure that their respective authorised representatives attend the meeting.
- (b) Without limiting the discussion or the decision made, the authorised representatives must consider at that meeting whether to resolve the issue referred to in clause 6.2(a) by any one or more of the following:
 - (1) requesting the Independent Certifier to comply with this Deed;
 - (2) changing the Services in accordance with clause 6.1;
 - (3) asking the Independent Certifier not to carry out a Service under clause 6.1;
 - (4) appointing a substitute Independent Certifier in connection with those Services in accordance with clause 6.4;
 - (5) suspending all or any of the Services in accordance with clause 6.2; and
 - (6) terminating the appointment of the Independent Certifier in accordance with clause 15.

6.3 Suspension of Services

The Developer and the Authority may give the Independent Certifier a notice jointly instructing the Independent Certifier to suspend its performance of any or all of the Services until the Developer and the Authority give the Independent Certifier a notice instructing the Independent Certifier to recommence performing those Services. The Independent Certifier cannot make any claim against the Developer or the Authority if any or all of the Services are suspended under this clause 6.3.



6.4 Substitute Independent Certifier appointed

- (a) Subject to clause 6.2(b)(4), the Developer and the Authority may appoint another Independent Certifier to carry out Services that they have instructed the Independent Certifier not to carry out under clause 6.1.
- (b) As between the Developer and the Authority (but not as between the Developer and the Authority and the Independent Certifier) decisions of the substitute Independent Certifier are to be treated as if they are decisions of the Independent Certifier.
- (c) Subject to any claim that any of the Developer and the Authority may have in respect of the Independent Certifier's performance, the Independent Certifier is not responsible for the substitute Independent Certifier's performance.

6.5 Independent Certifier must continue to perform

Despite any action by the Developer and the Authority under this clause 6, the Independent Certifier must continue to perform the Services, as varied under clause 6.1, in accordance with this Deed.

7 Insurance

- (a) Before commencing the carrying out of the Services, the Independent Certifier must effect and maintain (or cause to be effected and maintained), at its own cost and expense, as a minimum the following insurances:
 - (1) on terms as set out in Schedule 1 and as are acceptable to the Developer and the Authority, acting reasonably;
 - (2) with insurer(s) with a financial strength rating of at least 'A-' as rated by Standard and Poor's (or an equivalent rating from another internationally recognised rating agency, and which either:
 - (A) carries on insurance business in Australia and is authorised to do so and is regulated by the Australian Prudential Regulation Authority; or
 - (B) if an overseas insurer not authorised by the Australian Prudential Regulation Authority, operates in the London insurance market and is not required to be authorised under the Insurance Act 1973 (Cth) in order to undertake liability, as insurer, under the relevant insurance policy or other insurance cover or risk proposed to be underwritten by such overseas insurer;
 - (3) with a limit of indemnity of not less than the amount (if any) stated in Schedule 1; and
 - (4) for the period of time stated in Schedule 1.
- (b) Without limiting this clause 7, the Independent Certifier must:
 - (1) pay all premiums applicable to the insurances when due;
 - (2) pay all deductibles in respect of claims it has or makes upon the insurances when due;



- (3) promptly reinstate any insurances required to be effected and maintained by it under this clause 7 if such insurance lapses.
- (c) As and when required by the Developer and the Authority, the Independent Certifier must produce for inspection documentary evidence that the insurances in sub-clause (a) have been effected and are being maintained in accordance with this Deed. The effecting of insurance under this clause 7 shall not in any way limit the obligations and liabilities of the Independent Certifier under the provisions of this Deed.

8 Indemnity

- (a) The Independent Certifier agrees to indemnify, keep indemnified and hold harmless the Developer and the Authority from and against all Claims or Liabilities which the Developer and the Authority or any one of them suffers, incurs or becomes liable for or may suffer, incur or become liable for arising out of or in any way in connection with a breach by the Independent Certifier of this Deed.
- (b) The Independent Certifier's liability to indemnify the Developer will be reduced proportionally to the extent that any act or omission of the Developer directly contributed to the relevant loss or liability.
- (c) The Independent Certifier's liability to indemnify the Authority will be reduced proportionally to the extent that any act or omission of the Authority directly contributed to the relevant loss or liability.

9 Confidentiality

The Independent Certifier must not disclose any proprietary or confidential information (including the terms of the D&C Contract) relating to the Services and/or the Upgrade Works without the prior written consent of the Developer and the Authority. This clause 9 shall survive the termination of this Deed or the completion of the Independent Certifier's duties and functions under this Deed.

10 Payment

The Developer and the Authority must pay the Independent Certifier in accordance with Schedule 2.

11 GST

- (a) In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning as their definition in that Act.
- (b) Except as otherwise provided by this clause, all consideration payable under this Deed in relation to any supply is exclusive of GST.



- (c) If GST is payable in respect of any supply made by a supplier under this Deed, subject to clause 11(d) the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Deed.
- (d) The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 11(d).

12 Dispute resolution

12.1 Application of clause

This clause applies in respect of any dispute or difference arising from the arrangements contemplated in this Deed (in this clause 12 referred to as a **dispute**).

12.2 Dispute Notice

- (a) Any party claiming that a dispute has arisen must serve written notice (a **Dispute Notice**) to the other parties, specifying in reasonable detail the nature of the dispute and the suggested solution to the dispute.
- (b) A Dispute Notice may be given on a without prejudice basis, and may subsequently be amended as the party giving that Dispute Notice sees fit. Such amendment must occur within 10 Business Days after service of the original Dispute Notice, and must be made by written notice to the other parties.
- (c) If a Dispute Notice is amended in accordance with clause 12.2(b) by the addition of any new grounds of dispute, then any date in this clause 12 stated to be calculated by reference to the date of receipt of the Dispute Notice must instead be calculated by reference to the date of receipt of the amendment to the Dispute Notice.

12.3 Dispute Committee

- (a) Any dispute which is the subject of a Dispute Notice must be referred to a committee (**Dispute Committee**) consisting of the Senior Representative of each Disputing Party.
- (b) The Dispute Committee must meet at least once within 20 Business Days after a party receives a Dispute Notice, and must negotiate in good faith to try to resolve the dispute.
- (c) If the Dispute Committee unanimously agrees on a solution to the dispute (an **Agreed Solution**), then that Agreed Solution must be recorded in writing and signed by all representatives.
- (d) An Agreed Solution recorded in writing and signed by all representatives in accordance with clause 12.3(c) is final and binding on the parties, except in the case of manifest error.
- (e) If the Dispute Committee has not reached an Agreed Solution in accordance with clause 12.3(b) the parties may commence legal proceedings under clause 12.4.
- (f) All discussions conducted in accordance with this clause 12.3 are without prejudice.



12.4 Court proceedings

- (a) Unless a party has complied with this clause 12, that party must not commence legal proceedings relating to any dispute arising from this Deed, except where:
 - (1) that party seeks urgent interlocutory relief; or
 - (2) the dispute is in relation to the validity of a disputed termination and/or repudiation of this Deed.
- (b) Where a party fails to comply with this clause 12, the other parties need not comply with this clause 12 before commencing court proceedings relating to that dispute (including but not limited to proceedings to enforce the provisions of this clause 12).

12.5 General intention

To the extent practicable to ensure that the design and construction of the Upgrade Works may proceed on a timely and efficient basis, the parties must, so far as is reasonably practicable, continue to perform and comply with their respective obligations under this Deed to the extent that those obligations are not the subject of the dispute.

12.6 Continuance of performance

Despite the existence of a dispute, the parties must continue to perform their respective obligations under this Deed.

12.7 Survives termination

This clause 12 survives expiry or termination of this Deed.

13 Assignment and subcontracting

The Independent Certifier:

- (a) must not assign this Deed or subcontract any part of the Services without the prior written consent of the Developer and the Authority; and
- (b) remains responsible for performing the Services in accordance with this Deed, despite any subcontracting.

14 Information, access and assistance

14.1 Information

The Developer and the Authority must each provide such information and documentation to the Independent Certifier as:

- (a) is required to be provided under this Deed and the D&C Contract and at the times that information and documentation is required to be provided under this Deed and the D&C Contract; and



- (b) otherwise is reasonably required by the Independent Certifier to enable it to perform its obligations and discharge its duties and functions under this Deed and as soon as reasonably practicable after the Independent Certifier requests that information and documentation.

14.2 GIPA and Other information

- (a) The Authority may be required to publish information concerning this contract in accordance with the Government Information (Public Access) Act 2009 NSW, under any similar or replacement law or by the NSW Auditor-General or NSW Parliament. The Independent Certifier consents to the disclosure and/or publication of all information by the Authority in those circumstances.
- (b) The Independent Certifier must promptly, and in any event within three Business Days of receiving a written request by the Authority, provide the Authority with immediate access to the following information contained in records held by the Independent Certifier:
 - (1) information that relates directly to the performance of the Upgrade Works;
 - (2) information collected by the Independent Certifier from members of the public to whom it provides, or offers to provide, services pursuant to this deed; and
 - (3) information received by the Independent Certifier from the Authority to enable it to provide the Services
- (c) For the purposes of subclause (b), information does not include:
 - (1) information that discloses or would tend to disclose the Independent Certifier's financing arrangements, financial modelling, cost structure or profit margin;
 - (2) information that the Independent Certifier is prohibited from disclosing to the Authority by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (3) information that, if disclosed to the Authority, could reasonably be expected to place the Independent Certifier at a substantial commercial disadvantage in relation to the Authority, whether at present or in the future.
- (d) The Independent Certifier must provide copies of any of the information in subclause (b) as requested by the Authority, at the Independent Certifier's own expense.

14.3 Access

- (a) The Developer and the Authority must provide such access to the Upgrade Works as may be required by the Independent Certifier, or as is necessary, from time to time, to enable the Independent Certifier to perform its obligations and discharge its duties and functions under this Deed.
- (b) The Independent Certifier must, when accessing the Upgrade Works under clause 14.3(a):
 - (1) comply with any reasonable access requirements and procedures (including protocols relating to site management, safety, security, insurance and industrial relations matters) stipulated by the Developer



- or the Authority, and ensure that its officers, employees, agents and contractors also comply with such requirements and procedures; and
- (2) not, and must use its reasonable endeavours to ensure that its officers, employees, agents and contractors also do not, unreasonably obstruct or interfere with the carrying out of the Upgrade Works.

14.4 Assistance

The Developer and the Authority agree to:

- (a) promptly provide the Independent Certifier with whatever other assistance the Independent Certifier may reasonably require in connection with the performance of its obligations and the discharge of its duties and functions under this Deed;
- (b) not interfere or attempt to influence the Independent Certifier so that the Independent Certifier breaches its obligations under clause 2.2(c); and
- (c) provide to the Independent Certifier on request such information as the Independent Certifier reasonably requires in order to assist the Independent Certifier in carrying out and performing the Services. The Developer or the Authority (as applicable) must contemporaneously provide the other party to this Deed with a copy of any information provided to the Independent Certifier under this clause.

14.5 Specialist advice

- (a) In carrying out the Services, the Independent Certifier will, if it is necessary to obtain consultant or specialist advice, obtain that advice from sub-consultants and contractors independent of the Developer and the Authority, provided it obtains the prior approval of the Developer and Authority (such approval not to be unreasonably withheld or delayed)..
- (b) If the Developer and the Authority do not approve the appointment of the sub-consultant or contractor requested by the Independent Certifier, such approval not to be unreasonably withheld or delayed, then the issue of the appointment of the sub-consultant or contractor will be treated as a dispute and dealt with in accordance with clause 12.
- (c) If the Developer and the Authority agree with the Independent Certifier's request or appointment of the sub-consultant or Authority determined under clause 12, then the Independent Certifier must engage that sub-consultant or Authority on terms reasonably approved by the Developer and the Authority at the cost of the Developer and the Authority.

15 Termination

15.1 Termination by the Developer and the Authority

The Developer and the Authority jointly may terminate this Deed:

- (a) immediately by written notice to the Independent Certifier if a Termination Event occurs; or
- (b) upon 30 Business Days written notice to the Independent Certifier.



15.2 Termination by the Independent Certifier

The Independent Certifier may terminate this Deed upon 30 Business Days' notice to the Developer and the Authority if there are persistent material breaches of the payment obligations of the Developer and the Authority under clause 10 and such breaches are not promptly remedied or cured after notice from the Independent Certifier.

15.3 Cross termination

The Developer or Authority may terminate this Deed by giving notice in writing to the Independent Certifier if the D&C Contract is terminated.

15.4 Accrued rights or remedies not affected

Termination of this Deed does not affect any accrued rights or remedies of any party.

15.5 Return of Records

- (a) Within 5 Business Days after the termination of the engagement of the Independent Certifier, the Independent Certifier must deliver to the Developer and the Authority jointly all books, records, plans, specifications and other documents relating to the obligations, functions or duties of the Independent Certifier under this Deed which are in its possession or under its control. The Independent Certifier may keep for its own records a copy of any such books, records, plans, specifications, or other documents so delivered to the Developer.
- (b) The Independent Certifier acknowledges that the Developer and the Authority have the right to use, for the purposes of the works, all books, records, plans, specifications and other documents the Independent Certifier has delivered to the Developer.

16 Publicity

The Independent Certifier must:

- (a) not issue any information, document, advertisement or article in respect of the Upgrade Works for publication in any media;
- (b) not erect or make an advertisement on or in respect of the Upgrade Works without the prior written consent of the Developer and the Authority; and
- (c) refer enquiries from the media concerning the Upgrade Works to the Developer and the Authority.

17 Notices

17.1 Service of Notice

A notice or other communication required or permitted, under this Deed, to be served on a person must be in writing and may be served:

- (a) personally on the person;



- (b) by leaving it at the person's current address for service;
- (c) by posting it by prepaid post addressed to that person at the person's current address for service; or
- (d) by email to the person's current email address.

17.2 Particulars for Service

- (a) The particulars for service of the Developer are:
 - address: Level 14, Tower 3, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000.
 - email address: [REDACTED]@lendlease.com
- (b) The particulars for service of the Authority are:
 - address: Level 21, AON/Maritime Trade Towers, 201 Kent Street, Sydney NSW 2000.
 - email address: [REDACTED]@barangaroo.nsw.gov.au
- (c) The particulars for service of the Independent Certifier are:
 - address: The Podium Building, 1 Market Street, Sydney NSW 2000
 - email address: [REDACTED]@altusgroup.com
- (d) Any party may change the address or email address for service by giving notice to the other parties.
- (e) If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

17.3 Time of Service

A notice or other communication is deemed served:

- (a) if served personally or left at the person's address, upon service;
- (b) if posted within Australia to an Australian address, six Business Days after posting and in any other case, seven Business Days after posting;
- (c) if served by email, subject to clause 17.3(d), at the time of receipt unless the party sending the email knows or reasonably ought to suspect that the email was not delivered to the addressee's domain specified in the email address; and
- (d) if received after 5.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

18 General

18.1 Amendment

This Deed may only be varied or replaced by a document duly executed by the parties.



18.2 Entire Understanding

This Deed contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Deed and have no effect.

18.3 Waiver and Exercise of Rights

- (a) A single or partial exercise or waiver of a right relating to this Deed does not prevent any other exercise of that right or the exercise of any other right.
- (b) No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

18.4 No Relationship

No party to this Deed has the power to obligate or bind any other party. Nothing in this Deed will be construed or deemed to constitute a partnership, joint venture, or an employment, representative or fiduciary relationship between any of the parties. Nothing in this Deed will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

18.5 Governing Law and Jurisdiction

This Deed is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

18.6 Severance

- (a) If a provision in this Deed is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- (b) If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Deed.

18.7 Counterparts

This Deed may be executed in any number of counterparts all of which taken together constitute one instrument.

18.8 Costs of this Deed

Each party is responsible for its own costs of the preparation, negotiation, completion and execution of this Deed.



Schedule 1

Deed Particulars

Item	Particulars
Key Personnel (clause 1)	██████████, Director ██████████, Associate Director

Insurance	Particular
Public Liability	<p>Coverage: Public liability insurance written on an occurrence basis covering the liability of the Independent Certifier, the Developer, the Authority and any of their respective agents, contractors, employees and sub-contractors (including for liability to each other) in respect of:</p> <ol style="list-style-type: none"> (1) loss of, damage to, or loss of use of, any tangible property (including property of others in the insured's care, custody and control); and (2) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than a liability covered by workers compensation insurance), <p>arising anywhere in Australia out of or in connection with the Services to be carried out by the Independent Certifier under this Deed.</p> <p>Insurance Period: From the Commencement Date until the date of completion of the Services or the termination of this Deed whichever is the earlier.</p> <p>Limit: A minimum of ██████████ for each and every occurrence (unlimited in the aggregate for all occurrences).</p> <p>Other requirements: The Authority to be noted on the policy, and policy to contain a cross-liability and waiver of subrogation in favour of the Authority.</p>
Professional Indemnity	<p>Coverage: Professional indemnity insurance covering the liability of the Independent Certifier arising from a breach of duty owed in a professional capacity, by reason of any negligent act or omission of the Independent Certifier or any of its employees or agents, which must:</p>

- (1) be specific to the Upgrade Works, and have a definition of professional services broad enough to cover all professional duties, activities or services performed by the insured pursuant to this Deed; and
- (2) have a retroactive date of no later than the commencement of any preparatory work in respect of the Services.

Insurance Period: From the Commencement Date until the earlier of the expiry of 7 years after the date of completion of the Services or the expiry of 7 years after the termination of this Deed.

Limit: A minimum of [REDACTED] for any one claim and in the aggregate for all claims in any one 12 month policy period, with one automatic reinstatement and with a deductible of not more than \$200,000.

Worker's
Compensation
Insurance

Coverage: Workers' compensation insurance or registration as required by law, against liability for death of or injury to persons employed by the Independent Certifier in relation to the Services (or their dependants) giving rise to a claim in each jurisdiction where:

- (1) the performance of the Services is to occur;
- (2) the relevant employees' contract of employment was made; or
- (3) the relevant employees normally reside;

and where common law claims can be brought outside of the relevant statutory scheme, employer's liability insurance for a minimum of [REDACTED] for each occurrence.

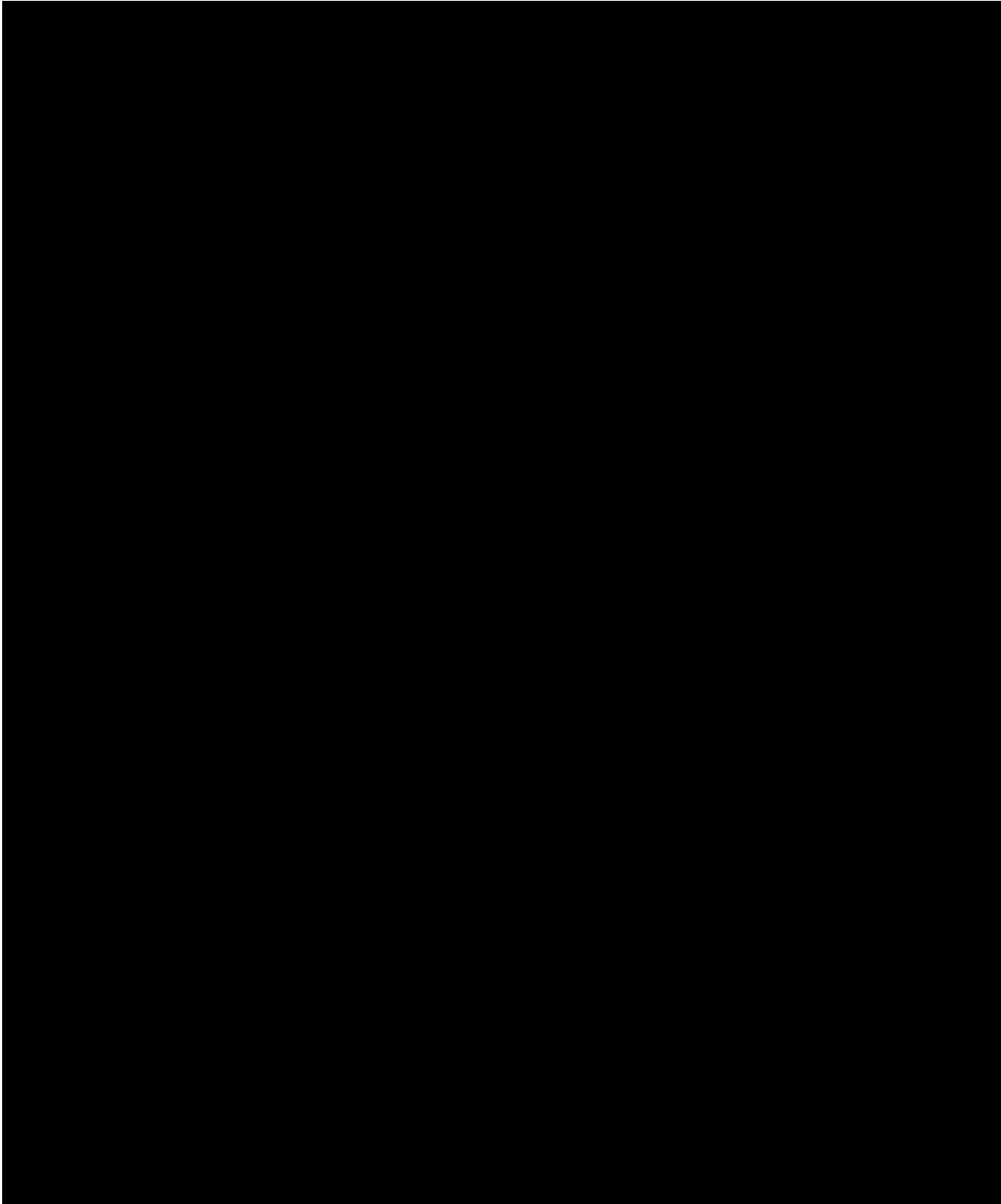
Insurance Period: From the Commencement Date until the date of completion of the Services or the termination of this Deed whichever is the earlier.

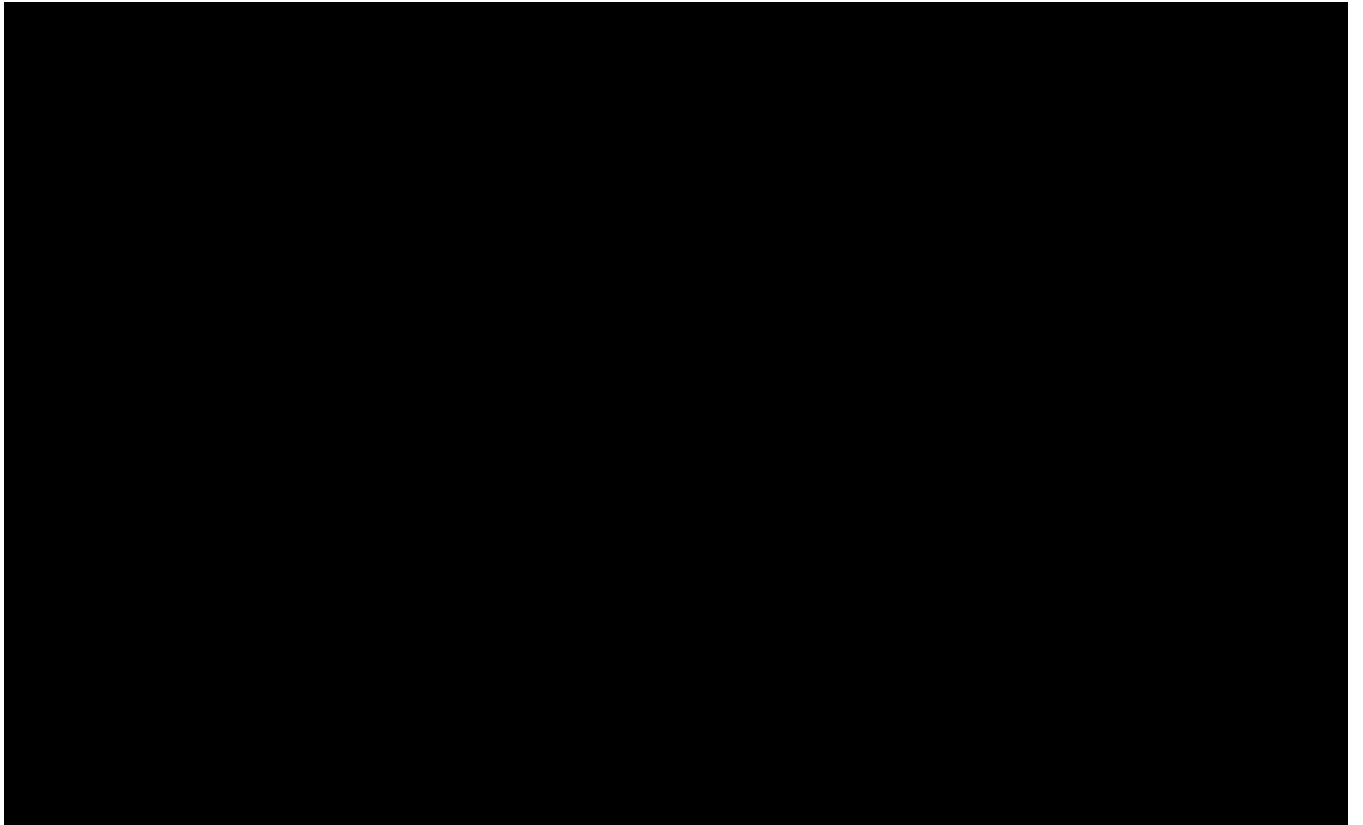
Other

Such other insurances as may be reasonably required by the Developer or the Authority from time to time.



Schedule 2





Schedule 3

Services

- (a) The Services set out in this schedule relate to the functions of the Independent Certifier under the D&C Contract.
- (b) Nothing in this schedule limits the obligations of the Independent Certifier under this Deed.
- (c) The functions of the Independent Certifier under the D&C Contract include:

Item No.	Function	Clause
----------	----------	--------

- | | | |
|---|---|--|
| 1 | <p>Provide services pursuant to the D&C Agreement as an independent:</p> <ul style="list-style-type: none"> (a) Quantity Surveyor (b) Contract Administrator (c) Certifier | |
|---|---|--|
-

- | | | |
|---|--|--|
| 2 | <p>The Independent Certifier will assess and certify (in accordance with the D&C Contract and this deed):</p> <ul style="list-style-type: none"> (a) D&C contractor progress claims (b) Variation claims (c) Extensions of Time claims (d) Other claims under the D&C Contract (e) when Practical Completion is achieved (f) that the necessary compliance certificates have been obtained (g) that the relevant Authority requirements have been met | |
|---|--|--|
-

- (h) defects and when defects are completed
 - (i) when Final Completion is achieved
-

- 3
- The Independent Certifier will
- (a) Generally provide advice and make recommendations
 - (b) Report each month on progress of works
 - (c) Prepare monthly reconciliation of Contract Sum/Variations/ EOTs
-

- 4
- The Independent Certifier will attend
- (a) PCG meetings
 - (b) Site inspections
 - (c) Ad-hoc meetings
-



Signing page

Executed as a deed

Developer

Signed sealed and delivered for
Lendlease (Millers Point) Pty Limited
by its attorneys

sign here ▶ _____ Attorney _____ Attorney

print name _____

in the presence of

sign here ▶ _____
Witness

print name _____

Authority

Signed sealed and delivered for
the **Barangaroo Delivery**
Authority by it Chief Executive
Officer, in the presence of

▶ _____ *sign here* ▶ _____

Witness

Chief Executive Office

print name _____

Craig van der Laan



Builder

Signed sealed and delivered for
Lendlease Building Pty Limited
by its attorneys

sign here ▶ _____ Attorney Attorney

print name _____

in the presence of

sign here ▶ _____ Witness

print name _____

Independent Certifier

Signed in accordance with section 127 of the Corporations Act by
Altus Group Consulting Pty Limited (Cth):

sign here ▶ _____ Director Director/Secretary

print name _____

ANNEXURE
General Conditions of Contract

PART H

MORAL RIGHTS CONSENT

Annexure H - Moral Rights Consent

Moral Rights Consent

In relation to any Moral Rights the [Author] (**Author**) has in respect of [*specify the relevant copyright work(s) - eg the relevant architectural plans*] (**Copyright Works**), the Author hereby consents to [Developer] (**Developer**) and the Barangaroo Delivery Authority (**Authority**), doing or authorising the doing of the following acts or making or authorising the making of the following omissions (whether occurring before or after this consent is given) anywhere in the world:

- (a) exercise any rights in relation to the Copyright Works, without identifying any person as the individual responsible for creating any particular material comprising the Copyright Works;
- (b) have the Copyright Works bear the name of Barangaroo or such other address of that property, or bear the name of the Developer, the Authority or any other person associated with the development of that property; and
- (c) modify, alter, adapt, distort or otherwise change any of the Copyright Works as it sees fit in its absolute discretion, including:
 - (i) by adapting or translating those Copyright Works into other dimensions, format or media; and
 - (ii) by changing, relocating, demolishing or destroying any 2 or 3 dimensional reproduction of those Copyright Works without notice to, or consultation with, the Author.

The Author acknowledges that the Developer and the Authority will be relying on the consents in this document and that those consents are intended to be legally binding.

Dated

Signed by [Author] in the presence of:

	Signature

Signature of Witness

Name of Witness in full

WARRANTY SCHEDULE

Item	Period
Street Furniture	12 months
Light Fittings (excluding light globes)	12 Months
Signs	12 months
CCTV	12 months
Cast Iron grates	12 months
Paving materials and workmanship	12 months
Trees	12 months (during maintenance period)

Note: Warranties period to be the greater of 12 months and the manufacturer's warranty period.

ANNEXURE
General Conditions of Contract

PART J

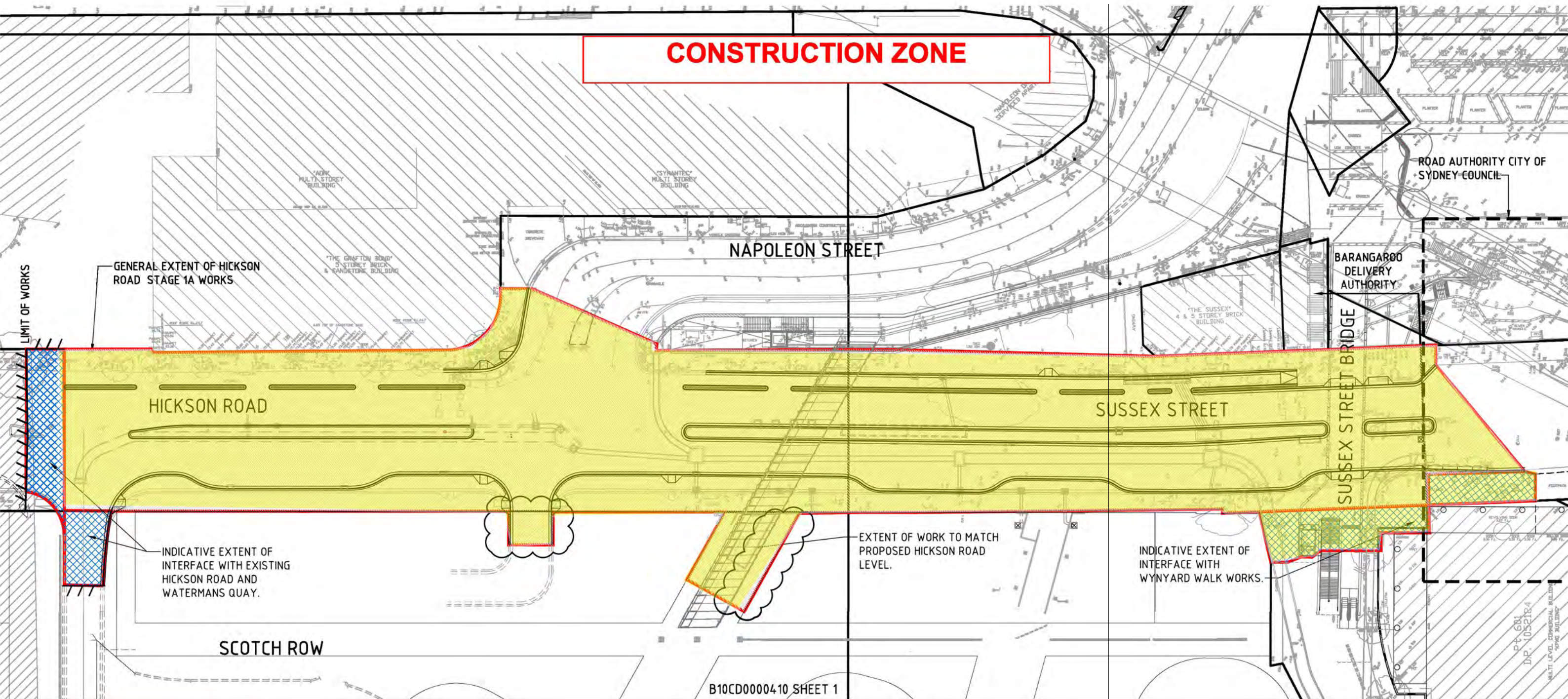
NOT USED

ANNEXURE
General Conditions of Contract

PART K

CONSTRUCTION ZONE PLAN

CONSTRUCTION ZONE



GENERAL EXTENT OF HICKSON ROAD STAGE 1A WORKS

LIMIT OF WORKS

HICKSON ROAD

NAPOLEON STREET

SUSSEX STREET

BARANGAROO DELIVERY AUTHORITY

SUSSEX STREET BRIDGE

ROAD AUTHORITY CITY OF SYDNEY COUNCIL

INDICATIVE EXTENT OF INTERFACE WITH EXISTING HICKSON ROAD AND WATERMANS QUAY.

EXTENT OF WORK TO MATCH PROPOSED HICKSON ROAD LEVEL.

INDICATIVE EXTENT OF INTERFACE WITH WYNARD WALK WORKS.

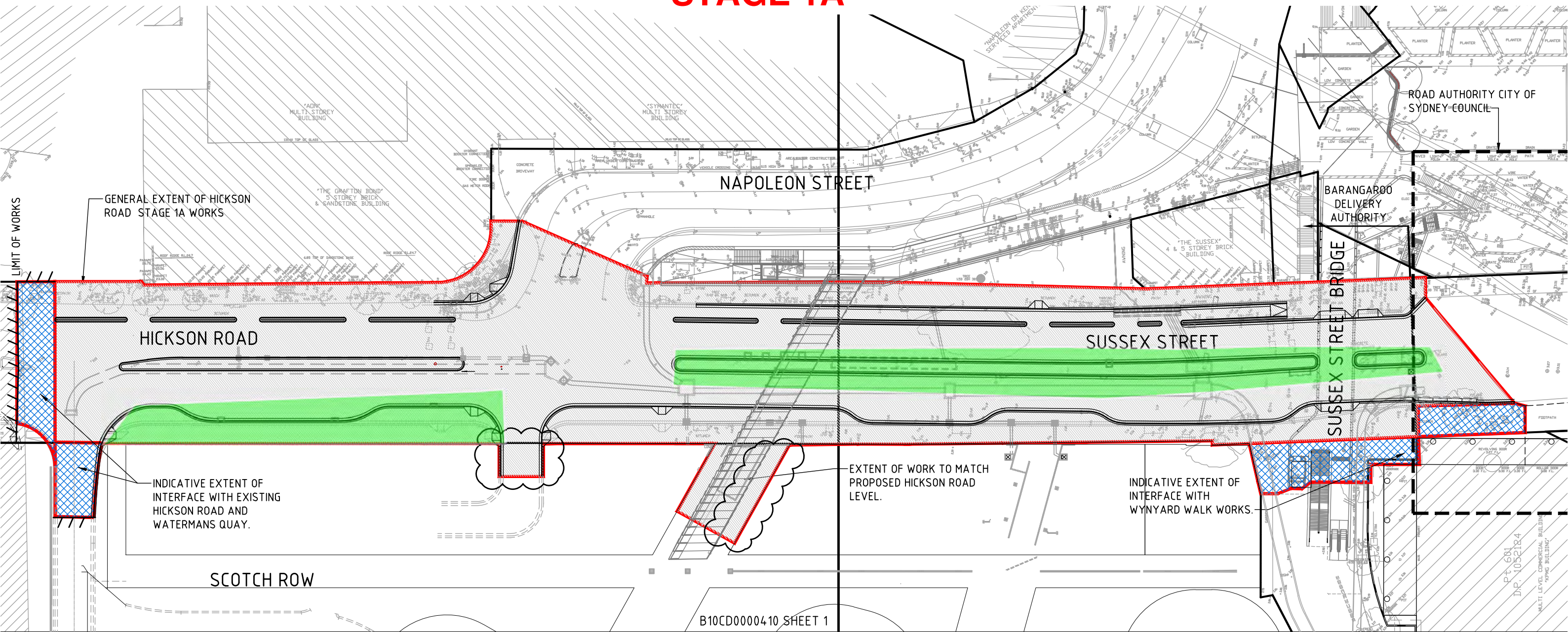
SCOTCH ROW

B10CD00004.10 SHEET 1

CONSTRUCTION ZONE

PLAN
DP 1052184
MULTI LEVEL COMMERCIAL BUILDING
ROAD BUILDING

STAGE 1A



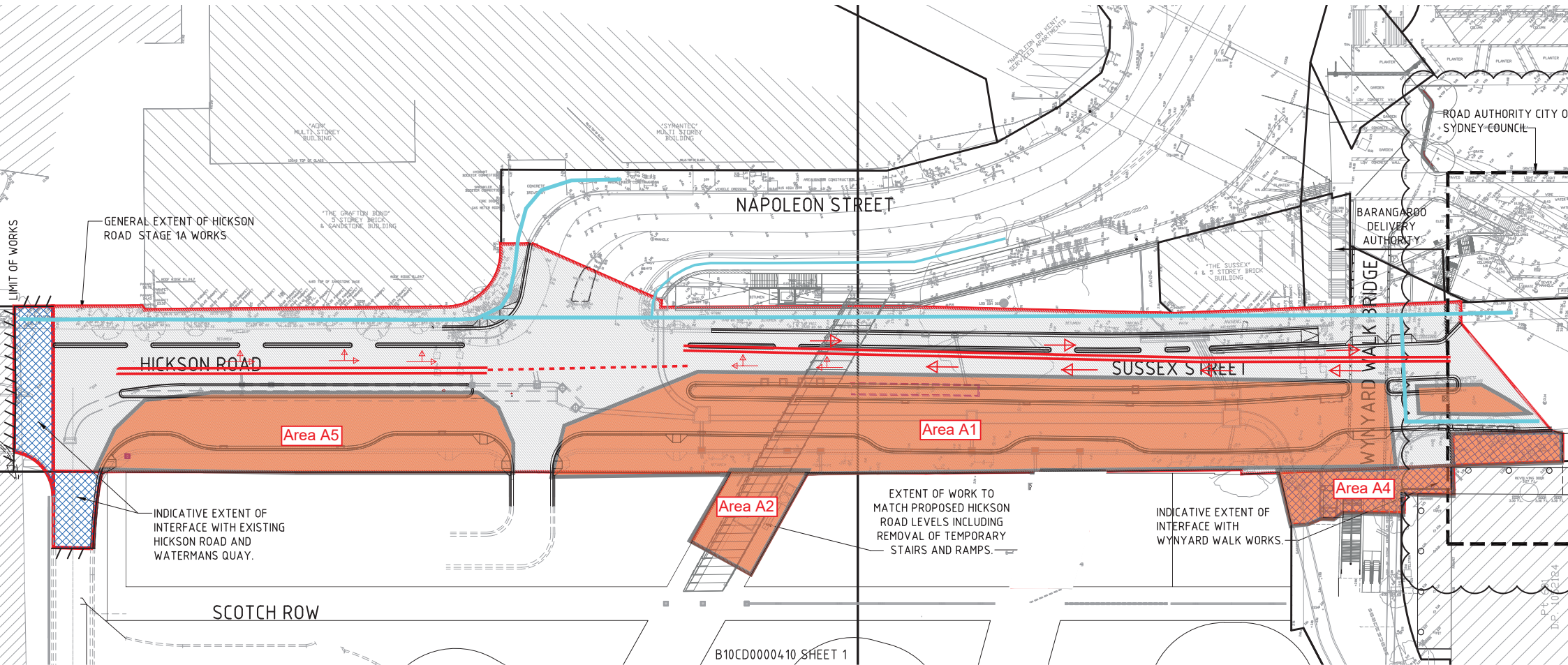
B10CD00004.10 SHEET 1

Pt. 681
D.P. 1052184
MULTI LEVEL COMMERCIAL BUILDING
'KPMG BUILDING'

STAGE 1A
- Inground Services

Not to Scale

Stage A



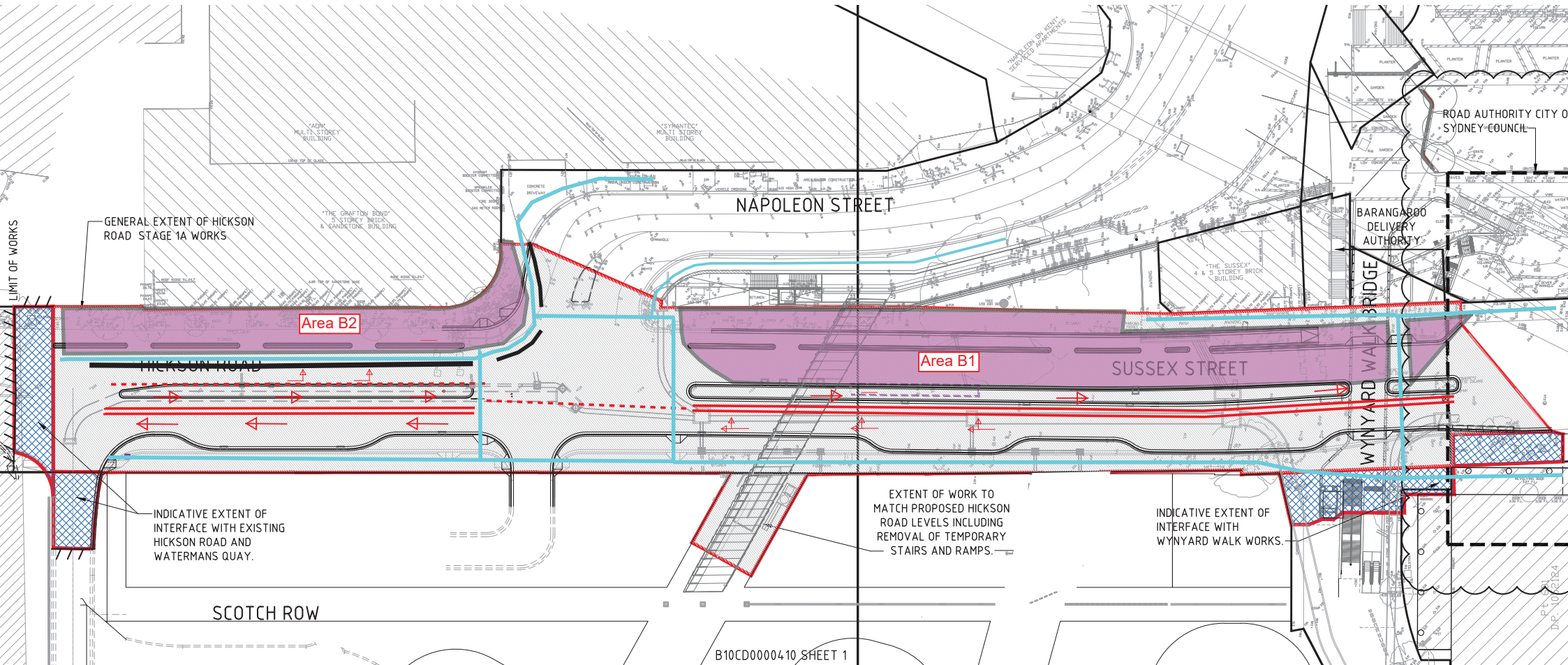
- Area A1**
- Stormwater
 - Elec/comms installation
 - Watermain Installation
 - SP Poles & Footings
 - Tree pit installation
 - K&G Installation
 - Pavement Installation
 - Street Furniture

- Area A2**
- Demolition of existing structures
 - Installation of stormwater
 - Pavement Installation

- Area A4**
- Pavement Installation
 - Street Furniture

- Area A5**
- Complete pavement demolition
 - Elec/comms installation
 - SP Poles & Footings
 - Tree pit installation
 - K&G Installation
 - Pavement Installation
 - Street Furniture

Stage B



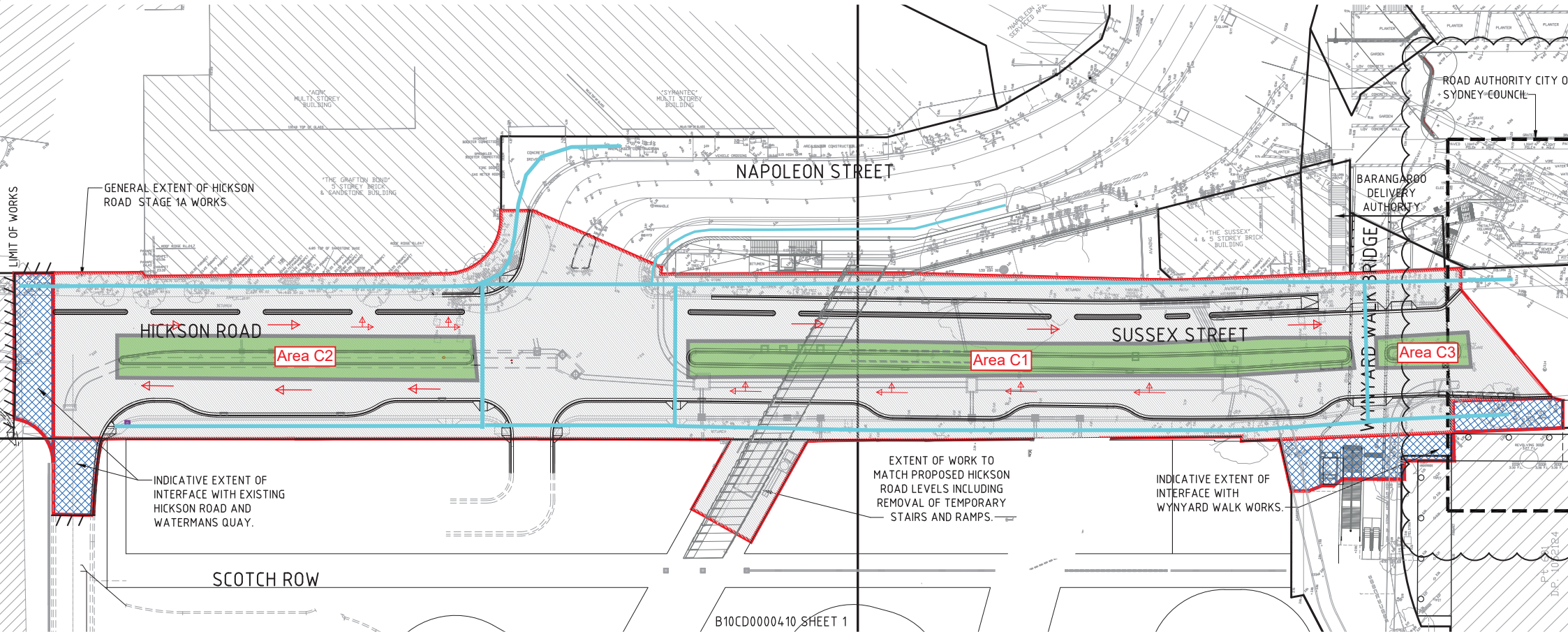
Area B1

Area B2

- Complete pavement demolition
- Stormwater (incl. Median Island Stormwater)
- Elec/comms installation
- Watermain Installation
- SP Poles & Footings
- Tree pit installation
- K&G Installation
- Pavement Installation

- Pavement Demolition
- Elect/comms Installation
- SP Poles & Footings
- K&G Installation
- Footpath Pavement Construction

Stage C



Area C1

Area C2

Area C3

All Areas

- Construction of Median Island

- Construction of Median Island

- Construction of Median Island

- Final Wearing Course to be placed at night
 - Mill & Resheet works to be undertaken at night
 - Line Marking Works

ANNEXURE
General Conditions of Contract

PART L

DEED OF NOVATION

FORM OF DEED OF NOVATION

Deed of Novation

This Deed made on the _____ day of _____ 20____

Between [#INSERT#] ABN [#INSERT#] of [#INSERT#] (Retiring Party)
and [#INSERT#] ABN [#INSERT#] of [#INSERT#] (Continuing Party)
and [#INSERT#] ABN [#INSERT#] of [#INSERT#] (Substitute Party)

Background:

- A. The Retiring Party and the Continuing Party are parties to the Agreement.
- B. The Retiring Party and Substitute Party have asked the Continuing Party to agree to the novation of the Agreement on the terms and conditions of this Deed of Novation (**Deed**).
- C. The Continuing Party has agreed to the novation of the Agreement on the terms and conditions of this Deed.

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Agreement have the same meanings in this Deed, unless the contrary intention appears.

In this Deed:

Agreement means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

Effective Date means the date of this Deed.

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

Liability means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

Related Entity has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
 - (c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
 - (e) a reference to a document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
 - (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
 - (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
 - (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;
 - (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (j) "includes" in any form is not a word of limitation; and
 - (k) a reference to "\$" or "dollar" is to Australian currency.

2. Novation

2.1 Novation

On and from the Effective Date:

- (a) The parties novate the Agreement so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Agreement.
- (b) Any reference in the Agreement to the Retiring Party shall be read as a reference to the Substitute Party.

2.2 Assumptions of rights and obligations

- (a) On and from the Effective Date the Substitute Party
 - (i) will be bound by and shall comply with the terms of the Agreement as amended by this Deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Agreement; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the terms of the Agreement,

in all respects as if the Substitute Party had originally been named in the Agreement as a party instead of the Retiring Party.

- (b) The Continuing Party will comply with the terms of the Agreement on the basis that the Substitute Party has replaced the Retiring Party under the Agreement in accordance with this Deed.

2.3 Release by Continuing Party

- (a) On and from the Effective Date, the Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in respect of the Agreement; and
 - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Agreement.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this Deed of the obligations and Liability of the Retiring Party under the terms of the Agreement.

2.4 Release by Retiring Party

On and from the Effective Date, the Retiring Party releases the Continuing Party from:

- (a) any obligation or Liability under or in respect of the Agreement; and
- (b) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Agreement,

except that nothing in this clause affects the obligations of the Continuing Party to:

- (c) the Substitute Party under the Agreement; and
- (d) the Retiring Party in respect of any breach of the Agreement prior to the Effective Date.

2.5 Warrant by Consultant

- (a) As of the Effective Date, the Continuing Party warrants that it has complied with the terms of the Agreement.

2.6 Insurance

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Agreement; and
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Agreement, the Substitute Party is named in place of the Retiring Party as required by the Agreement.

3. Overriding effect

The parties agree that the execution and operation of this Deed will for all purposes be regarded as due and complete compliance with the terms of the Agreement relating to any requirement for consent to assignment of the Agreement so far as any such provisions would apply with respect to the novation of the Agreement to the SUBSTITUE PARTY.

4. Representations and warranties

4.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this Deed.

4.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms.

4.3 Binding obligations

Each party represents and warrants to each other party that this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

5. Duties, Costs and Expenses

5.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this Deed or any transaction contemplated by this Deed (except to the extent the terms of the Agreement provide otherwise).

5.2 Costs

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this agreement.

5.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this Deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

6. General

6.1 Governing Law

This Deed is governed by and must be construed according to the laws of New South Wales.

6.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this Deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2(a).

6.3 Amendments

This Deed may only be varied by a document signed by or on behalf of each party.

6.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this Deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this Deed.
- (b) A waiver or consent given by a party under this Deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this Deed operates as a waiver of any other breach of that term or of a breach of any other term of this Deed.

6.5 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

6.6 Severance

If at any time a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

6.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this Deed.

6.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior consent of each other party.

Schedule

Agreement	Subcontract No.
State or Territory	New South Wales

Executed as a deed.

Executed by the Retiring Party by:

Signature of Director

Signature of Secretary/other Director

Name (please print)

Name (please print)

Executed by the Continuing Party by:

Signature of Director

Signature of Secretary/other Director

Name (please print)

Name (please print)

Executed by the Substitute Party by:

Signature of Director

Signature of Secretary/other Director

Name (please print)

Name (please print)

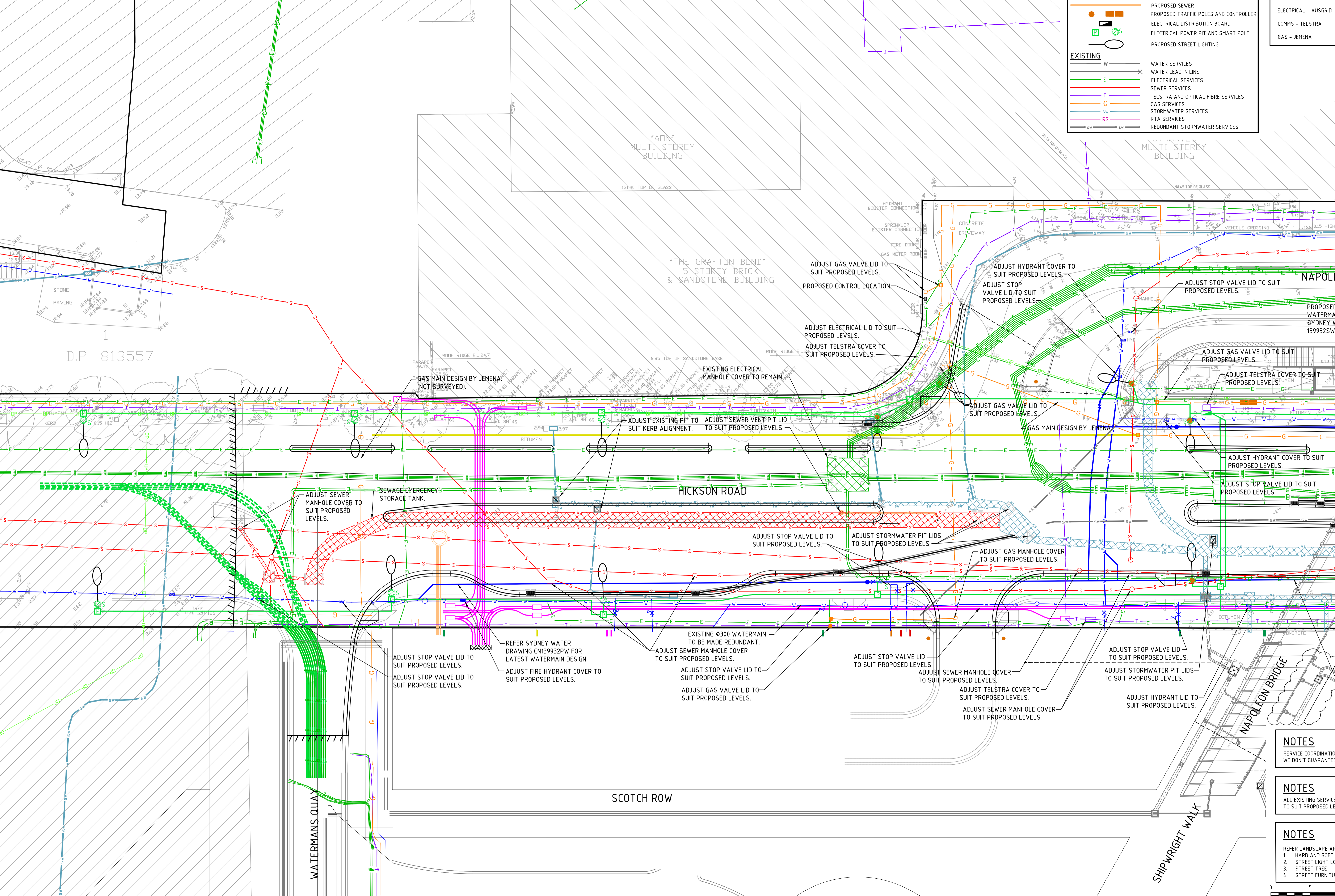
ANNEXURE
General Conditions of Contract

PART M

UTILITIES PLAN

B10 CD0000480 (C) HICKSON ROAD SERVICES PLAN SHEET 1

B10 CD0000481 (B) HICKSON ROAD SERVICES PLAN SHEET 2



LEGEND

- PROPOSED SEWER
- PROPOSED TRAFFIC POLES AND CONTROLLER
- ELECTRICAL DISTRIBUTION BOARD
- ELECTRICAL POWER PIT AND SMART POLE
- PROPOSED STREET LIGHTING
- EXISTING W
- WATER SERVICES
- WATER LEAD IN LINE
- ELECTRICAL SERVICES
- SEWER SERVICES
- T
- TELSTRA AND OPTICAL FIBRE SERVICES
- G
- GAS SERVICES
- SW
- STORMWATER SERVICES
- RS
- RTA SERVICES
- REDUNDANT STORMWATER SERVICES

ELECTRICAL - AUSGRID
COMMS - TELSTRA
GAS - JEMENA

1
D.P. 813557

PROPOSED WATERMAIN
SYDNEY WATER
139932SW

NOTES
SERVICE COORDINATION
WE DON'T GUARANTEE

NOTES
ALL EXISTING SERVICES
TO SUIT PROPOSED LEVELS

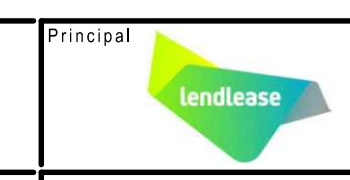
NOTES
REFER LANDSCAPE ARCHITECTURE
1. HARD AND SOFT
2. STREET LIGHTING
3. STREET TREE
4. STREET FURNITURE

C	APPROVED FOR CONSTRUCTION (AFC)	24.04.17
B	APPROVED FOR CONSTRUCTION (AFC)	12.04.17
A	APPROVED FOR CONSTRUCTION (AFC)	31.03.17
T3	ISSUE FOR INFORMATION ONLY	28.03.17
T2	ISSUE FOR INFORMATION	10.02.17

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Lead Architects
RSHP
RSHP Australia Pty Ltd
Ivan Harbour | Principal Architect
RAIN NSW ARB 8484
Sydney NSW 2000



Principal
BARANGAROO SOUTH

Title
STAGE 1A
HICKSON ROAD

REFER DRAWING B10 CD000480 FOR CONTINUATION

SERVICES LEGEND

PROPOSED

- PROPOSED COMMS
- PROPOSED ELECTRICAL
- PROPOSED WATER
- PROPOSED AUSGRID COMMS
- PROPOSED GAS
- PROPOSED SEWER
- PROPOSED TRAFFIC POLES AND CONTROLLER
- ELECTRICAL DISTRIBUTION BOARD
- ELECTRICAL POWER PIT AND SMART POLE
- PROPOSED STREET LIGHTING

EXISTING

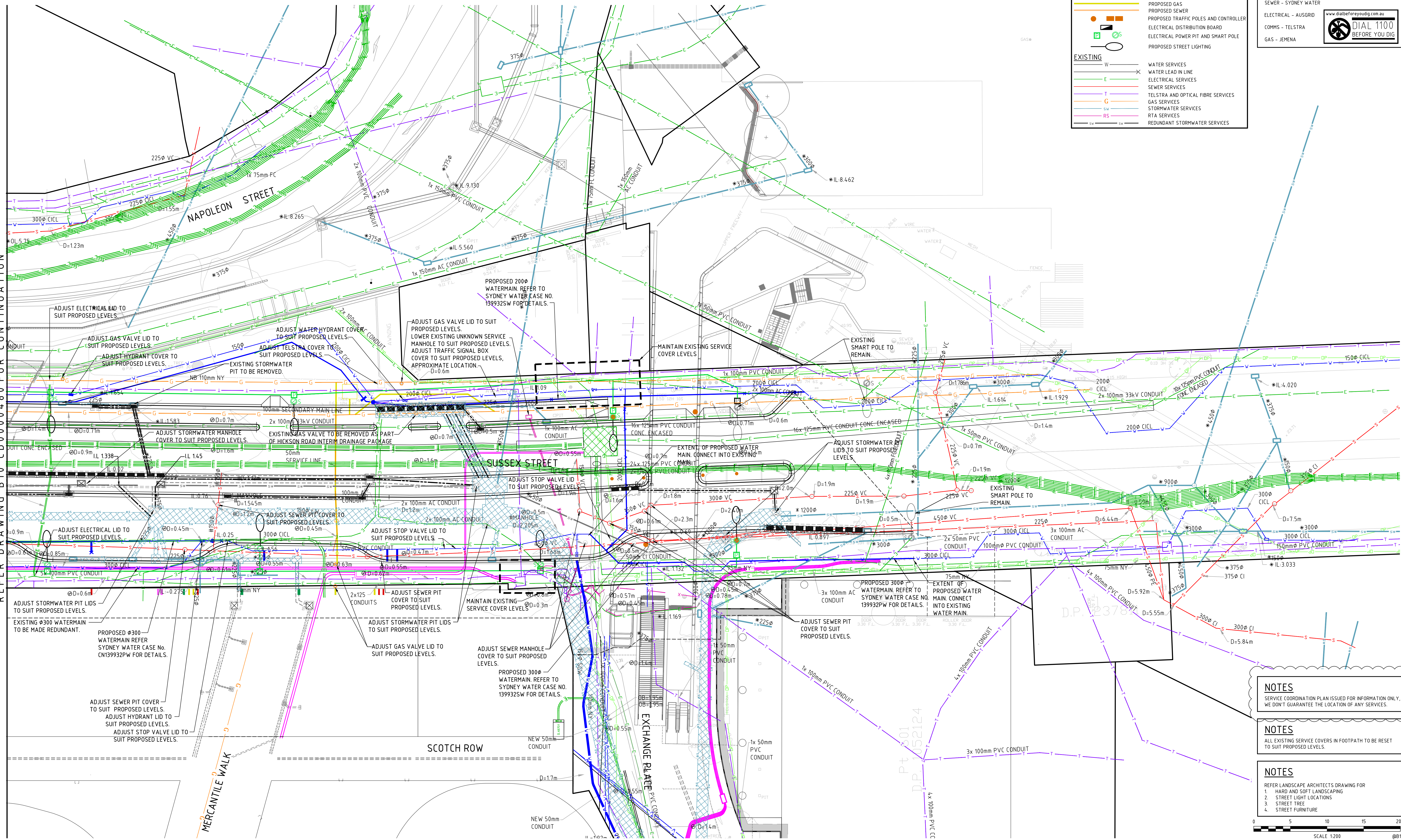
- WATER SERVICES
- WATER LEAD IN LINE
- ELECTRICAL SERVICES
- SEWER SERVICES
- TELSTRA AND OPTICAL FIBRE SERVICES
- GAS SERVICES
- STORMWATER SERVICES
- RTA SERVICES
- REDUNDANT STORMWATER SERVICES

SERVICES AUTHORITY

- STORMWATER - SYDNEY WATER
- WATER - SYDNEY WATER
- SEWER - SYDNEY WATER
- ELECTRICAL - AUSGRID
- COMMS - TELSTRA
- GAS - JEMENA

www.dialbeforeyoudig.com.au

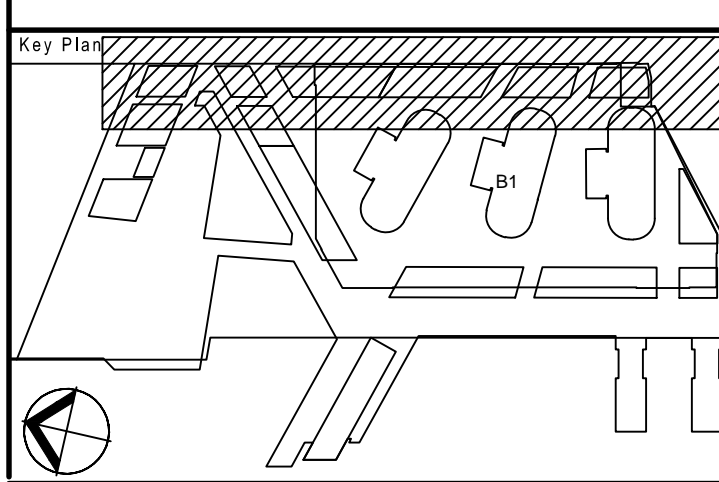
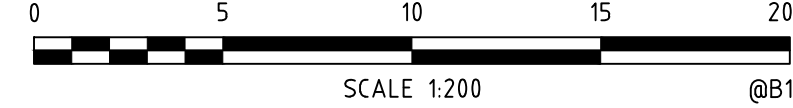
DIAL 1100 BEFORE YOU DIG



NOTES
SERVICE COORDINATION PLAN ISSUED FOR INFORMATION ONLY, WE DON'T GUARANTEE THE LOCATION OF ANY SERVICES.

NOTES
ALL EXISTING SERVICE COVERS IN FOOTPATH TO BE RESET TO SUIT PROPOSED LEVELS.

NOTES
REFER LANDSCAPE ARCHITECTS DRAWING FOR:
1. HARD AND SOFT LANDSCAPING
2. STREET LIGHT LOCATIONS
3. STREET TREE
4. STREET FURNITURE



Rev.	Revision Description	Date	Rev.	Revision Description	Date
8	APPROVED FOR CONSTRUCTION (AFC)	12.04.17			
7	APPROVED FOR CONSTRUCTION (AFC)	31.03.17			
6	ISSUE FOR INFORMATION ONLY	28.03.17			
5	ISSUE FOR INFORMATION	10.02.17			
4	IFT ISSUE	18.11.15			
3	90% IFC ISSUE	30.10.15			
2	60% ISSUE FOR TENDER (IFT)	25.09.15			
1	ISSUE FOR TENDER	25.08.15			
0	ISSUE FOR TENDER (IFT)	13.02.15			
	ALIGNMENT REVISION: REF ISSUE	12.12.14			
	REISSUED FOR REVIEW	02.09.14			
	ISSUE FOR TENDER	08.07.14			
	REISSUED FOR REVIEW AND BUDGET COSTING	29.04.14			
	REISSUED FOR REVIEW AND BUDGET COSTING	15.04.14			

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Lead Lease
Graham W Jones (Principal Architect)
FRAIA NSW ARB 4005
ABN 97 000 088 182

Principal
lendlease

Project Management & Construction
Lead Lease

Design
Lead Lease

Consultant
30 The Bond 30 Hickson Road
Millsers Point NSW 2000
www.lendlease.com

BARANGAROO SOUTH

**STAGE 1A
HICKSON ROAD SERVICES PLAN SHEET 2**

Drawn By: JB
Designed: MV
Checked: MKH
Approved By: [Signature]
Date: SEP'15

Scale: 1:200

Project No: 163782
Site No: B10
Drawing No: CD000481
Revision: B

PRINCIPAL'S SCOPE

Clause 32.4B

Principals Scope Item	Description	Direction Date
1) Works to existing pits and lid replacement as follows:	All works associated with the adjustment of the existing power, gas, communications and other services pits and lids as required by the asset owners.	10 Business Days after receipt by the Principal of the Contractor's initial written notice under clause 32.4B in respect of the relevant Principal's Scope item
	Adjustment to existing services structure to suit new pit depth as required by the asset owners.	10 Business Days after receipt by the Principal of the Contractor's initial written notice under clause 32.4B in respect of the relevant Principal's Scope item
2) Works to Mercantile and Shipwright Walks ramps as follows:	Patching penetration from redundant services and structure to Mercantile and Shipwright Walks	10 Business Days after receipt by the Principal of the Contractor's initial written notice under clause 32.4B in respect of the relevant Principal's Scope item
	Waterproofing to base structure at Mercantile and Shipwright Walks including all penetrations made redundant by the works.	10 Business Days after receipt by the Principal of the Contractor's initial written notice under clause 32.4B in respect of the relevant Principal's Scope item
	Patching to 'D' Wall after removal of redundant services	10 Business Days after receipt by the Principal of the Contractor's initial written notice under clause 32.4B in respect of the relevant Principal's Scope item
3 Smart pole and traffic light footings	Changes to smart pole and traffic light footings Extra over for cantilever footings to smart poles (14 off at an extra over rate @ \$5,965 each (\$83,510) Or extra over rates from the included Type 1 footing 600mm dia pier 2.2m deep:	3 Business Days after receipt by the Principal of the Contractor's initial written notice under clause 32.4B in respect of the relevant Principal's Scope item.

	<ul style="list-style-type: none">○ Cantilever with 1 pier and capping beam – Type 2 (\$1,794.00);○ Cantilever with 2 pier and capping beam – Type 3 ((\$5,965,00)○ Pad 2.8m x 2.8m x 0.6m deep – Type 4 (\$5,890.00)	
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