

The following has been released in response to a request for information about the Devonport Living City development grant.



Devonport Living City Project: DEVELOPMENT AGREEMENT

The Honourable Jeremy Page Rockliff MP
(being and in his capacity as the Minister for Education and Training)
(the **Minister**)

and

Devonport City Council
(the **Council**)

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Devonport Living City Project:

DEVELOPMENT AGREEMENT

Details and recitals

Date: 8th December 2016

Parties:

Name	The Honourable Jeremy Page Rockliff MP
	(being and in his capacity as the Minister for Education and Training)
Short form name	the Minister
Notice details	C/- Office of the Coordinator-General, Level 1 Cornwall Square, 12-16 St John Street, Launceston, Tasmania 7250 Email: cg@cg.tas.gov.au Attention: Coordinator-General

Name	Devonport City Council
ACN/ARBN/ABN	47 611 446 016
Short form name	the Council
Notice details	44-48 Best Street, Devonport, Tasmania 7310 Facsimile: (03) 6424 9649 Email: council@devonport.tas.gov.au Attention: General Manager

Recitals:

- A. The Council is the owner of the Council Land.
- B. The Council is undertaking the Project on the Council Land.
- C. Stage 1 of the Project includes:
 - (1) the design and construction of the:
 - (a) Multi-Purpose Building (within which the New Crown Premises will be located) and the carrying out of the New Crown Premises Fit Out;
 - (b) Car Park (within which the Crown Car Parks will be located); and
 - (c) the Food Pavilion,
 on the Council Land;
 - (2) the preparation and registration of one or more plans of subdivision of the Council Land, including the preparation and registration of a strata plan and a strata scheme (within the meaning of the *Strata Title Act 1998* (Tas)) for the Multi-Purpose Building and the creation of stand-alone lots for the Car Park and Food Pavilion; and
 - (3) the transfer to the Minister of the strata lot created for the New Crown Premises.
- D. As at the date of this Agreement, the intended design of the Project is as shown on the Stage 1 Plans.

E. In exchange for the Crown:

- (1) taking a transfer and becoming the owner of the New Crown Premises; and
- (2) taking up the Crown Car Parks Lease,

the Crown has agreed to provide certain contributions to the Council in accordance with this Agreement, including the payment of Purchase Price.

F. The Minister and the Council have entered into this Agreement to regulate:

- (1) the development of the Multi-Purpose Building, the New Crown Premises Fit Out, the Car Park and the Crown Car Parks;
- (2) the transfer of the New Crown Premises;
- (3) the grant of the Crown Car Parks Lease to the Crown; and
- (4) other related matters.

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Operative provisions

The parties agree as follows:

PART 1: PRELIMINARY

1 Definitions and interpretation

1.1 Definitions

In this Agreement, unless the context otherwise requires:

Act means the *Crown Lands Act 1976* (Tas).

Adjudicator means a person appointed pursuant to clause 36.3.

this Agreement means this agreement and includes all its annexures, appendices, attachments and schedules (if any).

Approval means any permit, licence, consent, grant, certificate, sealing or other approval required by any Law.

Asbestos includes 'asbestos', 'asbestos containing material (ACM)' and 'asbestos-contaminated dust or debris (ACD)', in each case, as defined in the *Work Health and Safety Regulations 2012* (Tas).

Australian Standard means any standard published by Standards Australia Limited.

Authorised Officer means:

- (a) for the Minister, each of the Secretary of the Department, an Acting Secretary of that department, a Deputy Secretary of that department, and a nominee of any of them; or
- (b) for any other party, a person authorised in writing by that party.

Bank means a bank that is an authorised deposit-taking institution for the purposes of the *Banking Act 1959* (Cwlth).

Bank Cheque means an unendorsed bank cheque drawn by a Bank.

Body Corporate means the body corporate created upon the registration of the Registered Strata Plan.

Builder means Fairbrother Pty Ltd ABN 51 009 510 561 of 12 Stony Rise Road, Devonport, Tasmania (or such other builder appointed by the Council during the term of this Agreement).

Building Contract means the building contract (comprising the Formal Instrument of Agreement and the AS4300-1995 General conditions of contract) entered into (or to be entered into) between Council and the Builder.

Business Day has the same meaning as in the *Building and Construction Industry Security of Payment Act 2009* (Tas).

By-laws means the by-laws for the strata scheme created upon the registration of the Registered Strata Plan.

Car Park means the multi-storey car park to be constructed upon the Council Land as part of the Stage 1 Works as shown on the Stage 1 Plans.

Certificate of Practical Completion means the certificate issued by the Superintendent under the provisions of the Building Contract which certifies that Practical Completion has been achieved.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature however arising and whether present or future, fixed or unascertained, actual or contingent, and whether at law, in equity, under statute or otherwise.

Common Property means:

- (a) prior to the Strata Plan Registration Date, those parts of the Multi-Purpose Building (constructed or to be constructed) shown as a 'Common Property' on the Stage 1 Plans, or which would be common property for the purposes of the *Strata Titles Act 1998* (Tas) if the Stage 1 Plans were registered under that Act; and
- (b) on and after the Strata Plan Registration Date, the common property (within the meaning of the *Strata Titles Act 1998* (Tas)) created by the Registered Strata Plan.

Completion means as the context requires, each or any combination of the following:

- (a) the completion of the sale and purchase of the New Crown Premises; and
- (b) lease of the Crown Car Parks,

in accordance with Part 2 of this Agreement.

Contingency Amount means an amount of \$100,000.00 (plus GST).

Council's Agents means:

- (a) each employee, consultant, contractor and agent of the Council;
- (b) each consultant engaged by the Council in relation to the Stage 1 Works;
- (c) each employee, subcontractor and agent of any of the above; and
- (d) the employees and agents of any such subcontractor,

who are involved in any activity related to the Stage 1 Works or the Council's obligations under this Agreement, and **Council's Agent** means any of them. The Minister is not, and nor is the Crown or any of the Crown's Agents, a Council's Agent.

Council Land means the land situated at:

- (a) 137-143 Rooke Street, Devonport, in Tasmania comprised in Tasmanian folio of the Register:
 - Volume 209646 Folio 5;
 - Volume 214571 Folio 1;
- (b) 40-48 Best Street, Devonport, in Tasmania comprised in Tasmanian folio of the Register:
 - Volume 145093 Folio 1;

- (c) Part 151 Rooke Street, Devonport, in Tasmania comprised in Tasmanian folio of the Register:
 - Volume 160513 Folio 1;
- (d) 13 Oldaker Street, Devonport, in Tasmania comprised in Tasmanian folio of the Register:
 - Volume 119861 Folio 1; and
- (e) 17 Oldaker Street, Devonport, in Tasmania comprised in Tasmanian folio of the Register:
 - Volume 160512 Folio 1.

Crown means the Crown in Right of Tasmania.

Crown's Agents means:

- (a) each officer and employee of the Crown; and
- (b) each agent and contractor of the Crown engaged in any activity related to the Minister's obligations under this Agreement,

and **Crown's Agent** means any of them. The Council, nor any of the Council's Agents, are a Crown's Agent.

Crown Car Parks means the 12 car parks being part of the Car Park (once constructed) and, as at the date of this Agreement, shown as 'Crown Car Parks' on the Stage 1 Plans.

Crown Car Parks Lease means the lease to be granted by Council in favour of the Minister for the use of the Crown Car Parks, the form of which is contained in 'Attachment 5: Crown Car Parks Lease.'

Crown Land means the Crown land (for the purposes of the Act) known as 21 Oldaker Street, Devonport in Tasmania:

- (a) comprised in Tasmanian folios of the Register:
 - Volume 145431 Folio 1;
 - Volume 145431 Folio 2;
 - Volume 145431 Folio 3;
 - Volume 145431 Folio 4;
 - Volume 147615 Folio 1;
 - Volume 147636 Folio 1;
 - Volume 147636 Folio 2;
 - Volume 147636 Folio 3;
 - Volume 17915 Folio 1; and
- (b) the unalienated Crown land comprising approximately 1,527 m², shown highlighted in blue on 'Attachment 6: Plan of Crown Land'.

Date for Practical Completion, in relation to a component of the Stage 1 Works, means the date on or by which Practical Completion for that component of the Stage 1 Works

must be achieved, being the relevant Milestone Date shown in 'Attachment 2: Milestone Events and Milestone Dates', and as extended in accordance with clause 25.

Date of Practical Completion means:

- (a) the date certified by the Superintendent in a Certificate of Practical Completion to be the date upon which Practical Completion was reached; or
- (b) where another date is determined in any dispute resolution or litigation as the date upon which Practical Completion was reached, that other date.

Default Event means each of the following events:

- (a) a failure by a party to comply with any provision of this Agreement; or
- (b) the occurrence of a Material Default.

Default Notice has the meaning in clause 34.1.

Defect Notice has the meaning given to that expression in clause 27.1.

Defects mean any defects or faults in the design or construction of any Stage 1 Works.

Defects Liability Period means in relation to the Stage 1 Works insofar as they relate to the New Crown Premises, the Common Areas and the Crown Car Parks, the period of 12 months commencing on the relevant Date of Practical Completion.

Department means the Department of State Growth or any other department which substantially succeeds to its functions as they relate to the Project.

Details means the details and recitals set out above.

Dispute means:

- (a) a dispute or matter which is the subject of a Dispute Notice given, or taken to be given, in accordance with this Agreement;
- (b) a dispute or matter which this Agreement states is taken to be a Dispute;
- (c) a dispute or matter which this Agreement provides is to be determined by an Adjudicator; and
- (d) a dispute or matter which the Minister and the Council agree in writing is a Dispute.

Dispute Notice means a notice given, or taken to be given, by a party to another party specifying that a dispute exists in relation to a matter in respect of which this Agreement provides that the first party may give a Dispute Notice.

DOE Premises means the area of approximately 50m² on level 1 of the Multi Purpose Building (once constructed) that the Minister notifies the Council under clause 14(a) it will lease under the DOE Premises Lease, but subject to final survey and, as at the date of this Agreement, as shown on the plan contained in Attachment 7 - 'Plan of Proposed DOE Premises'.

DOE Premises Lease has the meaning in clause 14(b).

Food Pavilion means the food court area to be constructed upon the Council Land as part of the Stage 1 Works as shown on the Stage 1 Plans.

Force Majeure Event means any one or more, or a combination, of the following:

- (a) lightning, hurricane, cyclone, earthquake, natural disaster, tsunami, drought declared as a state of emergency or mudslide;
- (b) act of a public enemy, war (declared or undeclared), riot, insurrection, civil rebellion, revolution, militarily usurped power or other like hostilities, terrorism or act of sabotage;
- (c) fire, explosion or flood at or transgressing on to the Site, not caused or contributed to by the Council or Council's Agents, where the Council can demonstrate that all reasonable preventative measures were taken (having regard to the nature of the Council Land and the work, as the case may be) to minimise the cause and effect of the fire, explosion or flood on the performance of its obligations under this Agreement; or
- (d) ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination not caused or contributed to by the Council or Council's Agents,

which (either separately or together) directly causes a party to be unable to perform all or a material part of its obligations (other than an obligation to pay money) under this Agreement, where the event or its consequences could not have been prevented by the exercise of a standard of care and diligence consistent with that of a prudent person undertaking the obligations under this Agreement and where the event or its consequences were not otherwise caused or contributed to by the failure by the Council or a Council's Agent to comply with its obligations under this Agreement and excludes:

- (i) all forms of industrial action; and
- (ii) wet or Inclement Weather which does not amount to an event referred to in paragraph (a) of this definition or to flood referred in paragraph (c) of this definition.

Good Design and Construction Practices means practices followed when work is undertaken:

- (a) in a sound and workmanlike manner;
- (b) with due care and skill applying nationally accepted engineering, construction and management practices, standards and procedures;
- (c) with due expedition and without unnecessary or unreasonable delays;
- (d) in a manner which allows the works to be efficiently and safely performed;
- (e) in accordance with all applicable Laws and relevant Australian Standards; and
- (f) using new materials of merchantable quality which are fit for their Stated Purpose.

Government Body includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government and a statutory authority or instrumentality.

GST means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

GST Laws means applicable Laws relating to GST.

Hazardous Substance a solid, liquid, gas, odour, heat, sound, vibration, radiation, material or substance of any kind on, in, or under land or water, including Asbestos, which:

- (a) makes or may make land or water unsafe, unfit or harmful for habitation, use or occupation by any person or animal;
- (b) creates or may be a risk to the health or safety of any person; or
- (c) is such that any part of the land or water does not satisfy any relevant criteria or standards published or adopted by the Environmental Protection Authority (Tas) from time to time.

Historical Artefacts means artefacts or items on or within the Council Land that are of historical significance to the Council Land or the Council.

Hoardings means the temporary barriers, fences, enclosures, barricades, booms and other like structures on land, including fixed signage, constructed or to be constructed by the Council within or around the Council Land in order to prevent public access to the Council Land.

Inclement Weather means weather of a nature that prevents the performance of the Stage 1 Works upon the Council Land.

Intellectual Property means all intellectual property created by a party or any agent of that party for the purposes of carrying out the Stage 1 Works (insofar as it relates to the Multi-Purpose Building), including plans, drawings and specifications for the Multi-Purpose Building.

Interest Rate means the one-year swap rate BBSW last published by Australia and New Zealand Banking Corporation Ltd.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

Lettable Area means the lettable area of the New Crown Premises (as the context requires) measured in square metres determined by a survey measurement in accordance with the Property Council of Australia Limited's 'Method of Measurement' 1997 Revision.

Loss means any loss, cost, expense, damage, liability, damages or exposure of any type and however arising incurred by a person including:

- (a) liability to third parties;
- (b) loss or damage arising out of an injury, disease or death; and
- (c) loss or damage as a result of any destruction of or damage to real or personal property.

Material Default– Council means each of the following events:

- (a) the Council abandons or suspends the Stage 1 Works for a period or periods, in aggregate, exceeding more than six months (excluding recognised building industry shutdown periods) but disregarding any such period or periods to the extent that the Council is entitled to an extension of time under clause 25;

- (b) the Council fails to reach the Date of Practical Completion on or before the Sunset Date (as that date is extended under this Agreement);
- (c) any act or omission by the Council which would, at common law, constitute repudiation of this Agreement;
- (d) the grant of an injunction (whether interim or permanent) by a court of the State or the Commonwealth of Australia that has the affect of prohibiting the completion of the Stage 1 Works and which is not removed within 60 Business Days of the date of such a grant; and
- (e) the Planning Permit is cancelled or found to be invalid, and a replacement planning permit for the Project has not been issued in accordance with the *Land Use Planning and Approvals Act 1993* (Tas) within six months of the cancellation or date of invalidity (being a permit that is acceptable to the Minister, acting reasonably).

Material Default– Minister means each of the following events:

- (a) a failure by the Minister to make a payment to the Council pursuant to clauses 10.1 and 29;
- (b) any act or omission by the Minister which would, at common law, constitute repudiation of this Agreement.

Milestone Date means any date applying to a Milestone Event as extended (if at all) under this Agreement.

Milestone Event means each event or activity detailed in 'Attachment 2: Milestone Events and Milestone Dates' being those events which are critical for the timely planning, design, construction and commissioning of the Stage 1 Works.

Minister means the Minister from time to time responsible for the portfolio of Education and Training (howsoever that portfolio may be represented from time to time), the Minister's successors in office, and where the context requires includes the Crown's Agent and all persons acting on behalf of the Minister.

month means calendar month.

Multi-Purpose Building means the multi-purpose civic centre to be constructed upon the Council Land as part of the Stage 1 Works as shown on the Stage 1 Plans.

New Crown Premises means those parts of the Multi-Purpose Building (constructed or to be constructed) shown as 'New Crown Premises':

- (a) prior to the Strata Plan Registration Date, those parts of the Multi-Purpose Building (constructed or to be constructed) shown as 'New Crown Premises' on the Stage 1 Plans; and
- (b) on and after the Strata Plan Registration Date, the lot created by the Registered Strata Plan which corresponds with the New Crown Premises referred to in paragraph (a).

New Crown Premises Fit Out means the fit out of the New Crown Premises included in Attachment 3: 'New Crown Premises Fit Out'.

New Crown Premises Transfer Date means a date as soon as is practicable but no later than 15 Business Days following the Strata Plan Registration Date and the issue of certificates of title to the lots created by that plan.

Planning Permit means:

- (a) the planning permit issued by the Council under the *Land Use Planning and Approvals Act 1993* (Tas) Permit Number: PA2015.0143 (31693) a copy of which is set out in 'Attachment 4: Planning Permit';
- (b) any amendment to that planning permit made in accordance with section 56 of the *Land Use Planning and Approvals Act 1993* (Tas), and agreed to in writing by the Minister; and
- (c) any further planning permit in relation to the Council Land which both the Minister and the Council have agreed, in writing, is to be a planning permit for the purposes of this Agreement.

Practical Completion is that stage in the execution of the Stage 1 Works under the Building Contract when, in respect of a component of the Stage 1 Works:

- (a) the relevant component of the Stage 1 Works are complete except for minor omissions and minor Defects:
 - (i) which do not prevent the relevant component of the Stage 1 Works from being reasonably capable of being used for their proposed purpose;
 - (ii) which the Superintendent determines the Builder has reasonable grounds for not promptly rectifying; and
 - (iii) rectification of which will not prejudice the convenient use of the relevant component of the Stage 1 Works;
- (b) those tests which are required by the Building Contract to be carried out and passed before the relevant component of the Stage 1 Works reach Practical Completion, have been carried out and passed;
- (c) documents and other information required under the Building Contract which, in the opinion of the Superintendent, are essential for the use, operation and maintenance of the relevant component of the Stage 1 Works, have been supplied;
- (d) the services and infrastructure for the relevant component of the Stage 1 Works are fully operational and performance has been demonstrated against the relevant technical and performance specifications;
- (e) the relevant part of the Council Land has been cleared, cleaned and there is unimpeded access to that part of the Council Land;
- (f) the relevant component of the Stage 1 Works are in accordance with and fit for the purpose stated in the Building Contract and are fully operational in all respects;
- (g) all certificates and Approvals required to be given or issued by any Government Body or statutory authority or other certifier required at law before the relevant component of the Stage 1 Works and every part of the relevant component of the Stage 1 Works can be occupied and are suitable for their proposed purpose have been issued and provided to the Council;
- (h) the Builder has provided the Superintendent with a certificate from the designer or designers of the relevant component of the Stage 1 Works that the relevant component of the Stage 1 Works have been constructed in accordance with the design documents required by the Building Contract of and all Laws which have an impact on the design have been satisfied;

- (i) the Builder has provided to the Superintendent a certificate from a licensed surveyor certifying that the relevant component of the Stage 1 Works are located within the boundaries of the Council Land in the place and position required by the terms of the Building Contract;
- (j) the Builder has successfully completed, to the satisfaction of the Superintendent, all commissioning required by the Building Contract in respect of the relevant component of the Stage 1 Works; and
- (k) the Builder has done everything else which it is required to do before, or as a condition precedent to, Practical Completion of the relevant component of the Stage 1 Works.

Preliminary Strata Plan has the meaning given in clause 11.2(a).

Project means the project being undertaken by the Council on the Council Land in three (or more) stages and known as 'Living City Devonport' and which includes the Stage 1 Works.

Project Documents means:

- (a) this Agreement;
- (b) the Stage 1 Plans; and
- (c) the Preliminary Strata Plan.

Purchase Price has the meaning set out in clause 10.1.

Registered Strata Plan means the strata plan and by-laws registered in relation to the Multi-Purpose Building pursuant to clause 11.

Rejection Notice has the meaning in clause 11.3(b).

Remedy Period means the period of 20 Business Days from and including the date of service of a Default Notice and any extended period granted under clause 34.3.

Remedy Plan means a plan by a defaulting party to remedy a Default Event which:

- (a) is proposed during the Remedy Period; and
- (b) details:
 - (i) if and why an extension of the Remedy Period is required;
 - (ii) the time required to cure the relevant Default Event; and
 - (iii) a work plan setting out each task to be undertaken and the time for each task to be completed.

Right includes a right, a power, a remedy, a discretion or an authority.

Soft Fitout and Office Decant means works and activities connected with readying the New Crown Premises for use and occupation by the Minister or a Crown's Agent including:

- (a) the delivery and placement of loose furnishings (including window treatments);
- (b) the delivery, installation and testing of computer equipment including routers, hubs and desktop computers;
- (c) data and power point relocations or installations;

- (d) minor alterations or additions to the New Crown Premises Fit Out works in the New Crown Premises (excluding construction works);
- (e) the installation of chattels and other equipment; and
- (f) the conduct of training and site familiarisation tours for Crown's Agents.

Soft Fitout and Office Decant Period means the period commencing on the day immediately following the relevant Date of Practical Completion of the Multi-Purpose Building and ending on the earlier of the New Crown Premises Transfer Date and the day being 30 days after the relevant Date of Practical Completion of the Multi-Purpose Building.

Stage 1 means the base building works for, as well as all works necessary for the use and occupation of:

- (a) the Multi-Purpose Building (including the New Crown Premises and the New Crown Premises Fit Out and all works in the vicinity of the New Crown Premises to enable peaceful and uninterrupted access to and use of the New Crown Premises);
- (b) the Car Park (including all works in the vicinity of the Car Park to enable peaceful and uninterrupted access to and use of the Crown Car Parks); and
- (c) the Food Pavilion.

Stage 1 Plans means the plans for Stage 1 of the Project, copies of which are included in 'Attachment 1: Stage 1 Plans'.

Stage 1 Works means the whole of the work to be executed by or on behalf of the Council in relation to Stage 1 in accordance with this Agreement and as required or contemplated by the Planning Permit (insofar as those required or contemplated works relate to Stage 1), and comprising all works required to construct and complete the following components of Stage 1:

- (a) the Multi-Purpose Building (including the New Crown Premises Fit Out);
- (b) the Car Park; and
- (c) the Food Pavilion,

and includes all temporary works (including the erection of Hoardings), all landscaping works and remedial works that relate to a relevant component.

Stated Purpose means the purpose for the Stage 1 Works as stated in or reasonably inferable from the Building Contract and the Planning Permit.

Statutory Charges means all charges in relation to the New Crown Premises levied by any Government Body including rates, water rates, sewerage rates, land tax (on a single holding basis), development levies, filing costs and subdivision levies.

Steering Committee has the meaning in clause 7.

Strata Act means the *Strata Titles Act 1998* (Tas).

Strata Plan Registration Date means the date on which the Recorder of Titles registers the strata plan and By-laws in relation to the Multi-Purpose Building, as lodged by the Council with the Recorder of Titles pursuant to clause 11.

Sunset Date means the relevant Milestone Date in 'Attachment 2: Milestone Events and Milestone Dates'.

Superintendent means the person appointed by the Council to perform that role under the Building Contract.

Variation means any change or addition to, or omission from, any of the Stage 1 Works.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, this Agreement;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) a reference to a document includes:
 - (i) anything on which there is writing;
 - (ii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else;
 - (iii) an amendment or supplement to, or replacement or novation of, that document; or
 - (iv) a map, plan, drawing or photograph;
- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (n) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or

functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;

- (o) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (r) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and
- (s) references to '\$' and 'dollars' are to Australian dollars.

1.3 Headings

Headings are included for convenience only and do not affect the interpretation of this Agreement.

1.4 No rule of construction applies to disadvantage party

In relation to the interpretation of this Agreement, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

1.5 Council's Agents

- (a) The Council must procure that each of the Council's Agents:
 - (i) where the context requires, complies with relevant provisions of this Agreement in the same manner as the Council is required to do; and
 - (ii) not act in a way which would result in the Council being in breach of this Agreement or which, if the action was undertaken by the Council, would result in the Council being in breach of this Agreement.
- (b) The performance by the Council's Agents in whole or in part of the obligations of the Council under this Agreement will not limit or affect the Council's obligations or liabilities under this Agreement.
- (c) An agreement, consent, approval, waiver or Notice made or given by the Council's Agents for the purposes of this Agreement is taken to also have been made or given by the Council.
- (d) An act or omission of the Council's Agents in connection with any activity relating to the Project Works (including negligent acts and omissions) is taken to be an act or omission of the Council for the purposes of this Agreement.

1.6 Subcontracting

The Council is not relieved of any of its obligations under this Agreement as a result of subcontracting any part of the Stage 1 Works.

1.7 Discrepancies

- (a) If the Council becomes aware of any ambiguity, error, omission, inconsistency, discrepancy or other fault in any Project Design Documentation, the Council must promptly notify the Minister of the ambiguity, error, omission, inconsistency, discrepancy or fault.
- (b) Where a discrepancy or inconsistency involves figured dimensions and scaled dimensions the figured dimensions shall take precedence over the scaled dimensions (unless the figured dimensions are obviously wrong). Plans (forming part of the Project Design Documentation) made to larger scales and those showing particular parts of the Project will take precedence over plans (forming part of the Project Design Documentation) made to smaller scales and those for more general purposes.

1.8 Inconsistency

- (a) In this clause 1.8:

Relevant Project Documents means each of the following Project Documents:

- (i) this Agreement;
- (ii) the Stage 1 Plan; and
- (iii) the Preliminary Strata Plan.

Scope, Design or Methodology Matter means a matter (including a Right, obligation or requirement) related to or concerning the scope or design of the Stage 1 Works, or the methodology for carrying out the Stage 1 Works.

- (b) If there is any inconsistency between any two or more Relevant Project Documents in relation to a Scope, Design or Methodology Matter, then except in the case of manifest error and subject to clause 1.7, the Relevant Project Document that has a higher priority will prevail, to the extent of the inconsistency, over the Relevant Project Document that has a lower priority.
- (c) For the purposes of clause 1.8(b), the priority of the Relevant Project Documents is the order in which those documents are listed in the definition of Relevant Project Documents in clause 1.8(a).
- (d) For the purposes of this clause 1.8, a Relevant Project Document is taken not to be inconsistent with another Relevant Project Document if they are both capable of being complied with.

1.9 Land

A reference to a piece or parcel of land includes all improvements and fixtures on that land.

1.10 Minister's delegation

- (a) The Minister may delegate to any person, as an agent of the Minister, the exercise, on behalf of the Minister, of any Right, function or responsibility which the Minister has under this Agreement.
- (b) Any such delegation may be:
 - (i) to a person or to the holder of a position;
 - (ii) revoked, changed or re-delegated; and

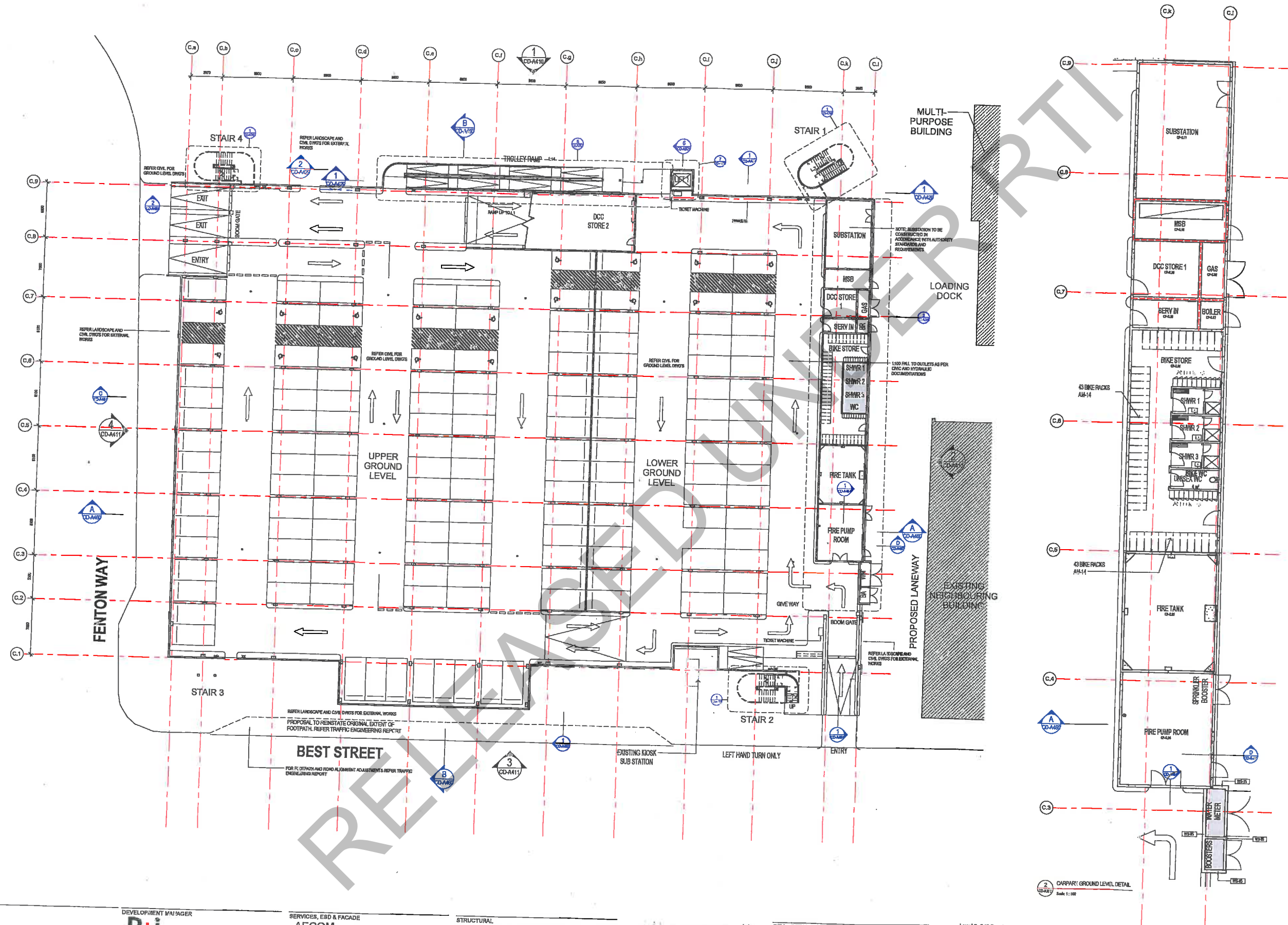
- (iii) unlimited or may be subject to such conditions as the Minister determines from time to time.
- (c) Where the Minister delegates any Right, function or responsibility under this Agreement to a person, the Minister must promptly (and in any event before the delegation is sought to be relied on) give notice of such delegation to the Council, including the identity and address of any person to whom such Right, function or responsibility is delegated and any changes in the identity and address of such person.
- (d) The Council is entitled to request details of the delegation of any Right, function or responsibility under this Agreement where a person purports to be acting under such a delegation. Once the Council obtains such details, it is entitled to rely on them and is obliged to give effect to them until the Minister gives written notice of the revocation of that delegation.
- (e) Until further written notice from the Minister to the Council, the holder for the time being of each of the following positions is taken to be a delegate of the Minister and able to exercise, on behalf of the Minister, all of the Rights, functions and responsibilities of the Minister under this Agreement except this power of delegation:
 - (i) the Secretary of the Department; and
 - (ii) an Acting Secretary of the Department.
- (f) Any person to whom Rights, functions or responsibilities are delegated by the Minister has, subject to the extent of that delegation and compliance with the terms of such delegation, the full Right and authority to act for and on behalf of and to bind the Minister under this Agreement.
- (g) Nothing in this clause 1.10 affects or limits:
 - (i) the operation of any delegation given by the Minister independently of this Agreement; or
 - (ii) any power of a person to act on behalf of the Minister or the Crown.
- (h) Despite any thing else in this Agreement, the Minister may by notice in writing to the Council ratify and confirm any thing done, or purported to be done, on behalf of the Minister or the Crown, by any officer or employee (within the meaning of the *State Service Act 2000* (Tas)). The Minister's ratification may be retrospective to the date on which the thing was done, or purported to have been done, by the officer or the employee.

2 Council's warranties

2.1 Warranties

The Council warrants to the Minister that:

- (a) the copy of the Planning Permit given, or to be given, by the Council to the Department is a true and complete copy of that permit;
- (b) the copy of the funding agreement, in respect of the Project, between the Council and the Commonwealth Government given by the Council to the Crown before



PROJECT
DEVONPORT LIVING CITY -
STAGE 1

DRAWING TITLE
CARPARK - GROUND FLOOR
PLAN

CLIENT
17 Fenton Way
Devonport, TAS 7310
T (03) 8471 2511

DEVELOPMENT MANAGER
P+i
151 Wagon Road
Sydney, NSW 2000
T (02) 8775 1600

CONTRACTOR
Fairbrother
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Bathurst, TAS 7004
T (03) 6220 9000

SERVICES, ESD & FACADE
AECOM
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Melbourne, VIC 3008
T (03) 9633 1234

STRUCTURAL
GANDY & ROBERTS
189 Cherry St
Hobart TAS 7002
T (03) 9223 8177

CIVIL ENGINEERING, TRAFFIC & BUILDING SURVEYOR
PITT & SHERRY
1028 Oakwood Drive
Devonport, TAS 7310
T (03) 8424 1041

REVISIONS

REV.	DATE	DESCRIPTION
1	18-11-14	CLADDING AND ROOFING UPLIFT
2	18-11-14	ISSUE FOR CONSULTANT COORDINATION
3	18-11-14	ISSUE FOR REVIEW - INTERIOR FINISH (EXCLUDING JOINERY)
4	18-11-14	ISSUE FOR TENDER - CLADDING AND ROOFING PACKAGE ONLY
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14	18-11-14	ISSUE FOR REVIEW - CLADDING AND ROOFING
15	18-11-14	ISSUE FOR CONSULTANT COORDINATION

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CONSTRUCTION DOCUMENTATION
ISSUE FOR CONSTRUCTION

CLIENT
17 Fenton Way
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DEVELOPMENT MANAGER
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DRAWING TITLE
CARPARK - GROUND FLOOR
PLAN

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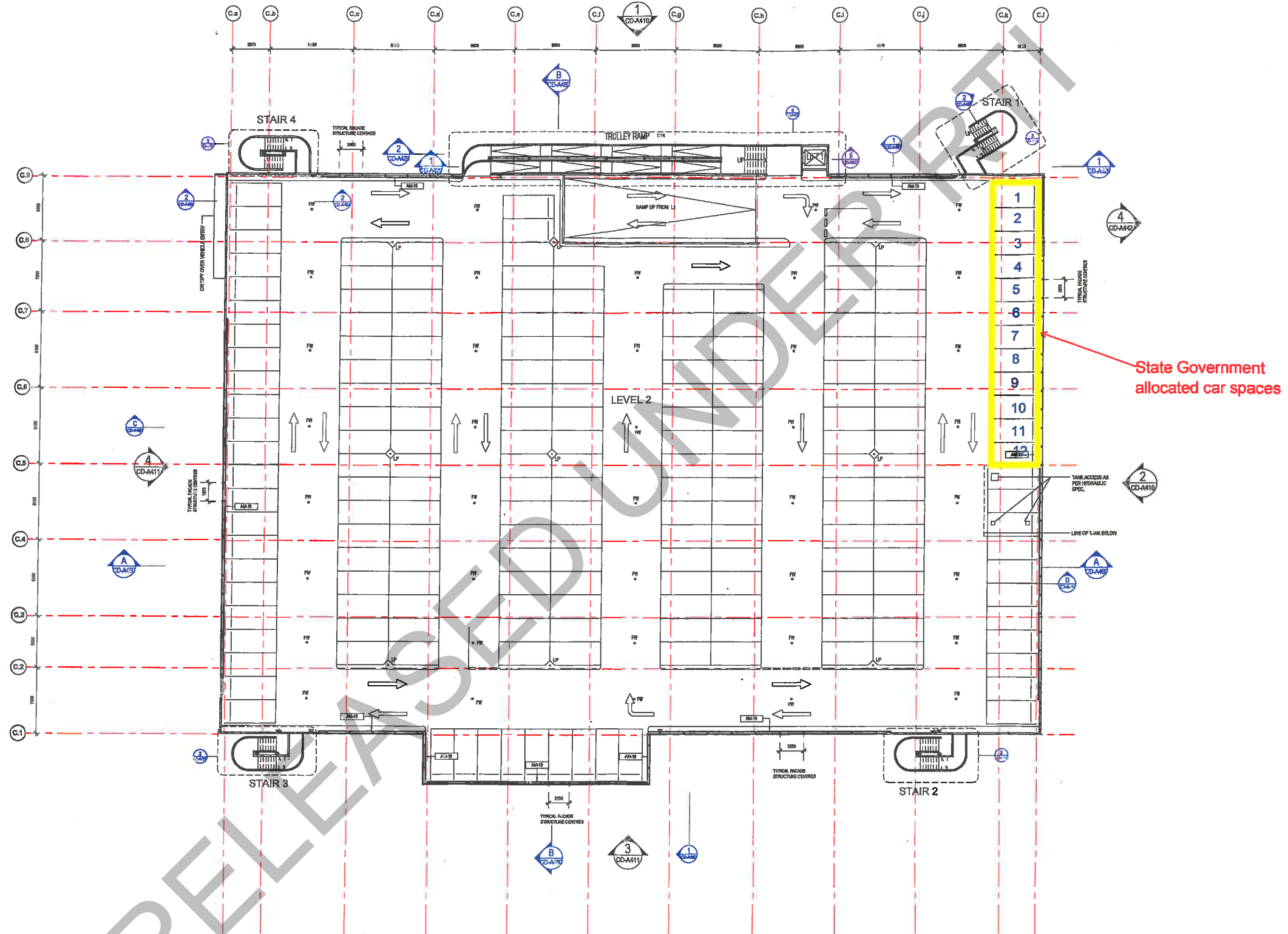
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CONTRACTOR
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SERVICES, ESD & FACADE
AECOM

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 Hobart, TAS, 7000
 T (03) 6228 8877

LANDSCAPE ARCHITECT
ASPECT STUDIOS

Level 1, 20-21 Esplanade
 Hobart, TAS, 7000
 T (03) 9417 0844

STRUCTURAL
GANDY & ROBERTS

159 Denison St
 Hobart, TAS, 7000
 T (03) 6228 8877

CIVIL ENGINEERING, TRAFFIC & BUILDING SURVEYOR
PITT & SHERRY

105 Glenelg Street
 Devonport, TAS, 7310
 T (03) 9424 1211



REV.	DETAILS	DATE
F	CLADDING AND ROOFING UPDATE	18-11-14
E	CONCRETE AND GLASS UPDATE	18-11-17
11	ISSUE FOR CONSULT WITH SPAC/SHOULDER	18-11-14
10	ISSUE FOR REVIEW - INTERNAL FITOUT (EXCLUDING JOINTS) - BLINDS	18-10-27
D	ISSUE FOR TENDER - CLADDING AND ROOFING (PAVING ONLY)	18-10-25
C	ISSUE FOR CONSULT ONLY COORDINATION	18-10-12
B	ISSUE FOR TENDER - CONCRETE / CONCRETE / FLOORCAST / WATERPROOFING AND BUILDING	18-10-11
A	ISSUE FOR REVIEW - CLADDING AND ROOFING	18-10-09
7	ISSUE FOR CONSULT ONLY COORDINATION	18-09-25
6	ISSUE FOR TENDER - STRUCTURAL STEEL / EXTERIOR GLAZING / PAINT / JOINTS	18-09-23
A	ISSUE FOR TENDER - CONCRETE / PRECAST / WATERPROOFING AND FLOORCAST	18-08-16
E	ISSUE FOR INFORMATION	18-08-12

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Lyons
maddison
birrell

PROJECT
DEVONPORT LIVING CITY - STAGE 1

DRAWING TITLE
CARPARK - LEVEL 2 PLAN

CONSTRUCTION DOCUMENTATION
 ISSUE FOR CONSTRUCTION

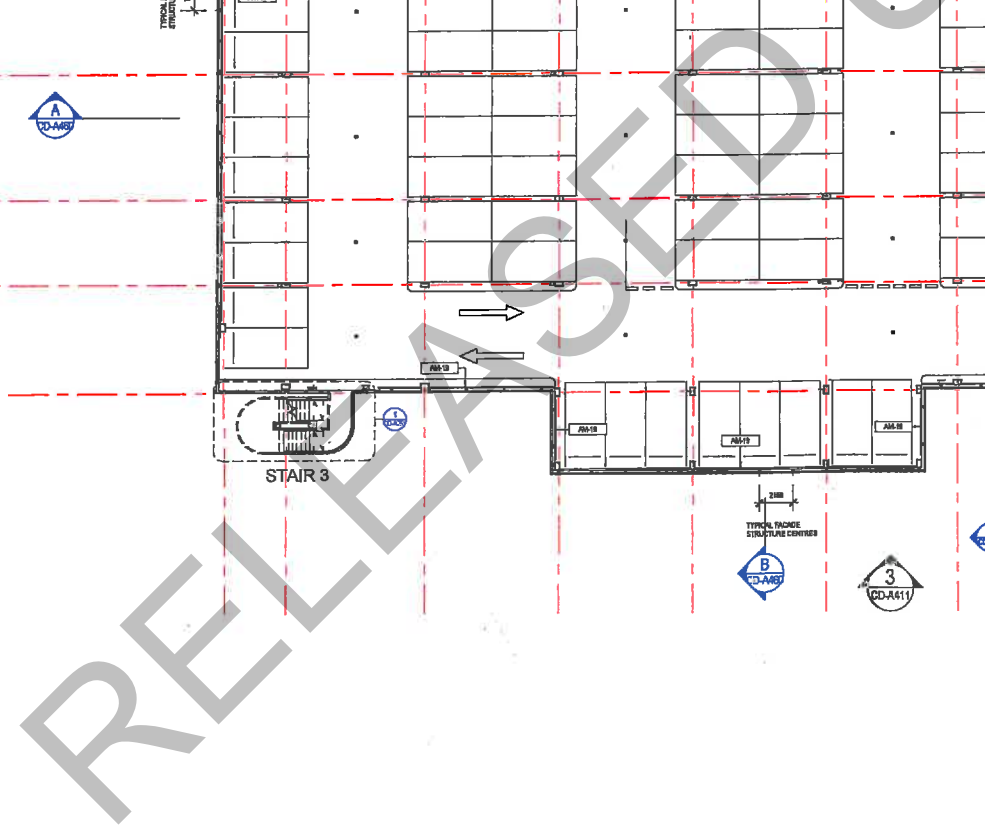
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DATE
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the date of this Agreement is a true and complete copy of that agreement (as amended);

- (c) the design of the Stage 1 Works (including the design of the New Crown Premises Fit Out), to:
 - (i) be fit for their Stated Purpose;
 - (ii) comply with all applicable Laws;
 - (iii) be consistent with conditions on the Council Land (including geo-technical and soil conditions), infrastructure availability, utility availability, foundation adequacy and all environmental conditions;
 - (iv) have been prepared in accordance with sound and accepted architectural and engineering practices and principles;
 - (v) not infringe any intellectual property rights of any third person; and
- (d) the Council, provided that the Minister complies with all its payment and contribution obligations under this Agreement, will have sufficient funds to carry out the Stage 1 Works in accordance with this Agreement;
- (e) the Council is either the absolute owner of or is entitled to use all Project Intellectual Property; and
- (f) the Council has disclosed, in writing, to the Department all amendments and further documents lodged with the Council in relation to the Planning Permit.

2.2 Reliance

The Minister may continue to rely on the warranties in clause 2.1 despite any review, investigation, agreement, or approval of, or in relation to, any matter or thing referred to in that clause.

2.3 Indemnity

The Council must indemnify the Minister for any Loss incurred, paid or payable by the Minister in connection with any warranty in clause 2.1 being untrue or misleading (except to the extent caused or contributed to by an act or omission of the Minister or a Minister's Agent).

3 Consents, approval and reliance by Minister

3.1 No duty of care

No duty of care is owed by the Minister to the Council or any of the Council's Agents to review any Project Design Documentation, or any other document submitted to the Minister in connection with this Agreement, for errors, omissions or compliance with applicable Laws.

3.2 No diminution of Council's obligations etc.

The liabilities, obligations and responsibilities of the Council under this Agreement are not diminished by:

- (a) any permission to use, comment, review, acceptance, approval, consent to proceed, consent, request to vary, or refusal to give permission to use, given by the Minister in relation to the design of the Stage 1 Works; or

- (b) any approval or monitoring of any Stage 1 Works by the Minister.

3.3 Reliance

In connection with the delivery of the Project, the Council unconditionally acknowledges and agrees that the Minister is relying, and will at all material times be entitled to rely, on:

- (a) the performance by the Council of its obligations under this Agreement and other Project Documents; and
- (b) the exercise by the Council's Agents of proper standards of independent professional skill, care and judgement in relation to, as applicable to each such agent, the design and/or construction of the Stage 1 Works.

4 Project matters

4.1 Project risks – risks allocated to the Council

- (a) Except to the extent otherwise provided in this Agreement, the Council unconditionally accepts responsibility for all risks (including legal, financial, time and cost) in connection with the following:
 - (i) the design, construction and/or carrying out of the Stage 1 Works (including the design of the New Crown Premises Fit Out);
 - (ii) the Stage 1 Works exceeding the funding available to the Council;
 - (iii) the condition of the Council Land (including Hazardous Substances);
 - (iv) any requirement, pursuant to an applicable Law, to carry out any further works (not shown in the Stage 1 Plans) to the Multi-Purpose Building which arises in connection with any of the following:
 - (A) the Stage 1 Works; or
 - (B) the consolidation of the Council Land into a single land parcel;
 - (v) Claims by third parties related to the carrying out of the Stage 1 Works;
 - (vi) the Council's obligation to comply with applicable Laws in relation to the carrying out of the Stage 1 Works;
 - (vii) any act or omission of any person engaged in any activity related to the carrying out of the Stage 1 Works;
 - (viii) any rise or fall in the cost of the Stage 1 Works;
 - (ix) any risk or responsibility allocated to the Council by operation of Law; and
 - (x) complying with this Agreement or any other Project Document.
- (b) As between the Crown and the Council, the Council is responsible for, and must pay and discharge as and when they fall due for payment, all liabilities, fees, costs, charges or expenses in connection with bearing responsibility for the risks referred to in clause 4.1(a).

- (c) The Council must not make or bring any Claim against the Crown in respect of any Loss incurred, paid or payable by the Council in respect of any risk referred to in clause 4.1(a).

4.2 Disclosure

- (a) Upon being requested to do so in writing by a party (**Requesting Party**), each other party (**Other Party**) must promptly disclose to the Requesting Party any information or documents (including, in the case where the Council is the Other Party, reports prepared by the Council's Agents) held by or on behalf of the Other Party relating to:
 - (i) any risks referred to in clause 4.1(a); or
 - (ii) the design, construction, completion or cost of the Project or any Stage 1 Works.
- (b) Nothing in this clause 4.2 requires a party to disclose any legal advice obtained by that party or any report obtained for the purposes of obtaining such legal advice.

5 Project liabilities and costs

Except for any liability, fee, cost or expense expressly payable by the Minister to the Council under this Agreement or any other Project Document, the Council is responsible for, and must pay and discharge as and when they fall due for payment, all liabilities, fees, costs and expenses (including third party fees, costs and expenses) incurred or payable by the Council in connection with the Project, including in connection with:

- (a) the performance by the Council, and the discharge, of its obligations under this Agreement and the other Project Documents; or
- (b) bearing responsibility for the risks referred to in clause 4.1.

6 Intellectual Property

6.1 Grant of licence

- (a) The Council, where it is able to, grants to the Minister a perpetual, irrevocable, non-exclusive and royalty free licence to use, reproduce, modify and adapt the Intellectual Property (insofar as it relates to the New Crown Premises, and services, including mechanical services, for the New Crown Premises whether within or outside the New Crown Premises and the Common Property only) (**Relevant Intellectual Property**) in connection with the exercise of any of the Minister's Rights.
- (b) Where the Council is unable to grant the licence referred to in clause 6.1(a), it must:
 - (i) firstly, use its best endeavours to procure the grant of such a licence from the relevant owner of the Relevant Intellectual Property on terms and conditions satisfactory to the Minister (acting reasonably); and
 - (ii) secondly, where it is unable to procure the grant of the licence referred to in clause 6.1(b)(i), hold the Council's interest in the Relevant Intellectual Property for the benefit of the Minister and, at the cost of the Minister,

implement such changes and enforce such Rights as the Minister may require in relation to the Relevant Intellectual Property.

6.2 Further action required by Council

The Council must as requested by the Minister:

- (a) execute any document reasonably required by the Minister for the purpose of perfecting or more fully giving effect to the licence granted by clause 6.1;
- (b) do all such further things, including securing such additional Rights, as may be necessary to give effect to the licence granted by clause 6.1; and
- (c) deliver to the Minister a copy of all 'as-built' plans for the Multi-Purpose Building (both in 'paper format' and electronically), including any enhancements or modifications.

7 Steering Committee

7.1 Steering Committee

The Council must ensure that a group (**Steering Committee**) is established on the date of this Agreement. The Steering Committee will comprise:

- (a) the Director, Office of the Coordinator General;
- (b) the Deputy Director, Office of the Coordinator General;
- (c) the Director, Services Tasmania;
- (d) the Deputy Director, Services Tasmania;
- (e) the Deputy Secretary, Corporate and Business Services, Department of Education;
- (f) the Director, Property and Procurement, Department of Treasury and Finance;
- (g) the Director, LINC Tasmania;
- (h) the Manager, Asset Planning, Department of Education;
- (i) the Executive Manager Corporate, Business and Community Services, Devonport City Council;
- (j) the Deputy General manager, Devonport City Council;
- (k) a Director of the Council's Project Manager (Projects & Infrastructure Holdings Pty Ltd); and
- (l) any other person reasonably required by the Council or the Minister.

7.2 Steering Committee functions

The functions of the Steering Committee include:

- (a) after commencement of the Stage 1 Works:
 - (i) receiving information about:
 - (A) the progress of the Stage 1 Works including anticipated delays and remedial action;

- (B) the quality of work and any remedial measures required; and
- (ii) any matter which is the subject of a report required by clause 16; and
- (b) responding to enquiries from the Minister in relation to the Stage 1 Works.

7.3 Status of Steering Committee

- (a) The Steering Committee:
 - (i) has no legal responsibility;
 - (ii) has no legal status;
 - (iii) does not have any power:
 - (A) to enter into any obligation or accept any liability;
 - (B) to make any commitment on behalf of a party;
 - (C) to require any party to act, or refrain from acting, in any way; or
 - (D) to give any instructions or directions to any person.
- (b) Information exchanged at a Steering Committee meeting does not constitute a Notice for the purposes of this Agreement.

7.4 Steering Committee meetings

- (a) The Steering Committee must meet in Devonport, either in person or via telephone or tele-presence, on a monthly basis and at any other agreed times.
- (b) The Council must meet all costs of its personnel and involvement in the Steering Committee.
- (c) A representative of the Council will convene and chair all meetings of the Steering Committee.
- (d) The Council must prepare draft minutes of the meetings and provide them to the Minister within three Business Days of the meeting occurring. A representative of the Minister will finalise the minutes of the meetings and provide them to the Council.

7.5 Costs

Each party must bear its own costs in connection with meetings of the Steering Committee.

PART 2: SALE OF NEW CROWN PREMISES and CROWN CAR PARKS

8 Ownership before registration of Strata Plan

8.1 Interpretation

In this clause 8:

Date of Substantial Commencement - Stage 1 means the date on or by which the Council has substantially completed, in accordance with this Agreement, the construction of the concrete floor slab for level 1 of the Multi-Purpose Building and the Car Park.

Specified Project Property means:

- (a) the Stage 1 Works (insofar as they relate to the Multi-Purpose Building) carried out by the Council, or by the Council's Agents, for the construction of the New Crown Premises; and
- (b) an interest in the Stage 1 Works (insofar as they relate to the Multi-Purpose Building) carried out by the Council, or by the Council's Agents, for the construction of the Common Property and which is equivalent to the interest that the Crown would have in those works if the Preliminary Strata Plan was registered in accordance with the *Strata Titles Act 1998* (Tas) and the Crown was the registered proprietor of the New Crown Premises and the Crown Car Parks; and

Relevant Period means the period commencing on the Date of Substantial Commencement - Stage 1 and ending on the date the bare trust, created by clause 8.2(a), is extinguished pursuant to clause 8.2(a)(i) or clause 8.2(a)(ii).

8.2 Crown entitlement to Specified Project Property

- (a) Subject to this clause 8, during the Relevant Period:
 - (i) the Crown is entitled to an equitable interest in the Specified Project Property as if it were a purchaser under a contract for the sale of land; and
 - (ii) the Council, in its capacity as the legal owner of the Council Land, and as a bare trustee only, holds the Specified Project Property on trust for the Crown.
- (b) The bare trust will be fully extinguished by the transfer to the Crown of the New Crown Premises in accordance with clause 12.
- (c) If this Agreement is terminated by the Minister in accordance with clause 35:
 - (i) the bare trust is extinguished;
 - (ii) the Crown's equitable interest in the Specified Project Property is extinguished and converted to the monetary amount payable by the Council to the Crown in accordance with clause 8.2(c)(iv);
 - (iii) subject to clause 8.2(c)(ii), the Specified Project Property vests in the Council absolutely; and

- (iv) the Council must repay the Purchase Price to the Crown in accordance with clause 35.2.

8.3 Overriding provisions related to Specified Project Property

Nothing in clause 8.2:

- (a) except as provided in clause 12, entitles the Crown to call for a transfer to it of any Specified Project Property;
- (b) prejudices, limits or affects the Minister's Rights under this Agreement; or
- (c) imposes on the Minister any obligation or liability in relation to the Specified Project Property greater than the Minister's express obligations or liabilities under this Agreement.

9 Agreement for sale of New Crown Premises and grant of Crown Car Parks Lease

Subject to this Agreement:

- (a) the Council agrees to sell to the Crown, and the Crown exercising its powers in accordance with section 9 of the *Land Acquisition Act 1993* (Tas), agrees to purchase from the Council, an estate in fee simple in the New Crown Premises; and
- (b) the Council agrees to grant and the Minister agrees to take the Crown Car Parks Lease.

10 Purchase Price

10.1 Purchase Price

- (a) The purchase price for the New Crown Premises is \$11,000,000.00 (exclusive of GST) (**Purchase Price**).
- (b) The Minister must pay to the Council, by Bank Cheque, the Purchase Price within 20 Business Days of the date of this Agreement.

10.2 Use of Purchase Price by Council

- (a) The Council must only use the Purchase Price for the purposes of the Project.
- (b) Notwithstanding clause 10.2(a), the Council must repay the Purchase Price to the Crown in the event that this Agreement is terminated in accordance with clause 35.2.

11 Preparing Strata Plan for registration and first by-laws

11.1 Interpretation

An expression defined in the Strata Act has the same meaning when used in this clause 11 unless the expression is given a different meaning in this clause or the context otherwise requires.

11.2 Preparation of Strata Plan

- (a) The Council must, as soon as is practicable, instruct the Council's surveyors to prepare a strata plan (**Preliminary Strata Plan**) in respect of the Multi-Purpose Building which reflects the building layouts shown in the Stage 1 Plans.
- (b) The Preliminary Strata Plan must be prepared in conformity with the Strata Act and other applicable Laws.
- (c) The Council must consult with the Minister in relation to the preparation of the Preliminary Strata Plan by the Council's surveyors.
- (d) The Minister must ensure that each Crown's Agents provides to the Council's surveyors any information or document reasonably required by the Council's surveyors in connection with the preparation of the Preliminary Strata Plan (and any subsequent update to that plan agreed by the parties during the conduct of the Stage 1 Works (insofar as they relate to the Multi-Purpose Building)).
- (e) The Council must complete the steps in this clause 11.2 for which the Council is responsible as early as practicable having regard to good surveying practice, the requirements of the Strata Act and the state of the Stage 1 Works.

11.3 Approval or rejection of Preliminary Strata Plan

- (a) The Council must give a copy of the Preliminary Strata Plan, prepared in accordance with clause 11.2, to the Minister as soon as practicable following the completion of its drafting for approval by the Minister.
- (b) Not later than 15 Business Days after receiving the Strata Plan from the Council, the Minister must, in writing, notify the Council whether the Minister rejects, or approves, the Preliminary Strata Plan. A notice rejecting (**Rejection Notice**) the Strata Plan must specify the grounds upon which the Minister rejects the Strata Plan.
- (c) If the Minister neither, rejects or approves the Preliminary Strata Plan within the time permitted by 11.3(b), the Minister will be taken to have approved the Preliminary Strata Plan.
- (d) If the Minister approves, or is taken to have approved, the Preliminary Strata Plan, the form of the strata plan lodged for registration in accordance with the Strata Act, save as to any variations to the Preliminary Strata Plan as agreed between the parties or which are required in order to reflect agreed changes to the Stage 1 Plans or to satisfy a direction or requirement of a Government Body or the Recorder of Titles, must otherwise accord with the approved Preliminary Strata Plan.
- (e) The only grounds upon which the Minister may reject the Preliminary Strata Plan submitted to it for approval under clause 11.3(a) are that the Preliminary Strata Plan does not accord with the requirements of clause 11.2.

11.4 Resolution of disputes in relation to Strata Plan

If the Minister gives a Rejection Notice in accordance with clause 11.3(b), the following provisions apply:

- (a) If not later than 15 Business Days after the Minister gives its Rejection Notice the Council and the Minister agree that the form of strata plan submitted for approval under clause 11.3(a) will be the Preliminary Strata Plan, that plan will be taken to be the Preliminary Strata Plan.

- (b) If not later than 15 Business Days after the Minister gives its Rejection Notice the Council and the Minister agree to amend the form of strata plan submitted for approval under clause 11.3(a), the Council must amend the form of strata plan originally submitted for approval under clause 11.3(a) and resubmit it to the Minister for approval in accordance with clause 11.3(a).
- (c) If the Council and the Minister make no such agreement within the period of 15 Business Days after the receipt of the Rejection Notice, a Dispute will be taken to exist.
- (d) If the Adjudicator appointed to determine the Dispute in relation to the form of strata plan submitted for approval under clause 11.3(a) determines that the form of strata plan submitted for approval under clause 11.3(a), in respect of which the Rejection Notice was given, complies with clause 11.2, that plan will become the Preliminary Strata Plan.
- (e) If the Adjudicator appointed to determine the Dispute in relation to the Strata Plan determines that the form of strata plan submitted for approval under clause 11.3(a), in respect of which the Rejection Notice was given, does not comply with clause 11.2, the Council is to:
 - (i) modify the form of strata plan submitted for approval under clause 11.3(a) in accordance with any directions given by the Adjudicator (but any such directions must not breach the requirements set out in clause 11.2(b));
 - (ii) obtain the Adjudicator's written approval of the amendments; and
 - (iii) subject to clause 11.5, promptly lodge the amended form of strata plan for approval by the Minister under clause 11.3(a).

11.5 By-laws for Body Corporate

- (a) No later than 60 Business Days prior to the Date for Practical Completion, the Minister and the Council must agree on:
 - (i) the first By-laws for the Body Corporate; and
 - (ii) the unit entitlements (including any special unit entitlements) for each lot within the Preliminary Strata Plan,

that will accompany or form part of the Preliminary Strata Plan that is lodged for registration with the Recorder of Titles.
- (b) Without limiting the matters that may be agreed for the purposes of clause 11.5(a)(i), the By-laws for the Body Corporate will provide as follows:
 - (i) that the owner or occupier of a lot within the Registered Strata Plan must:
 - (A) not use that lot for any use or purpose which may be illegal;
 - (B) ensure that the use and occupation of that lot does not:
 - (1) injure the reputation or goodwill of the Body Corporate or the owner or occupier of another lot within the Registered Strata Plan;
 - (2) bring the Body Corporate into dispute; or
 - (3) cause any undue or inappropriate nuisance, disturbance or annoyance to any other owner of a lot within the Registered

Strata Plan, whether through noise, vibration, impact, dust, smell, fumes, smoke or through any other means;

- (C) not sell or permit to be sold any alcoholic beverages unless the occupier of the lot (or the relevant part of the lot) holds a valid liquor licence; and
- (D) obtain, maintain and otherwise comply with all Laws and Approvals required for the lawful use of that lot by the owner or occupier; and
- (ii) the granting of naming rights for the Multi-Purpose Building by the Body Corporate will require a unanimous resolution.
- (c) Without limiting the matters that may be agreed for the purposes of clause 11.5(a)(ii), the unit entitlements will reflect the following:
 - (i) the Crown will hold 50% of all unit entitlements for fixing the number of votes to be exercised by the Crown as owner of the New Crown Premises at a general meeting, or special general meeting, of the Body Corporate;
 - (ii) the unit entitlements for fixing the proportionate contribution to be made by an owner of a lot within the Registered Strata Plan to the Body Corporate will be based on the proportionate area of each lot within the Registered Strata Plan over the net lettable area of the Multi-Purpose Building calculated in accordance with the Australian Property Council 'Method of Measurement' effective March 1997 but excluding any services to the Multi-Purpose Building that do not benefit that relevant lot within the Registered Strata Plan; and
 - (iii) in all other cases, the unit entitlements to the Registered Strata Plan will be based on the net lettable area of the Multi-Purpose Building calculated in accordance with the Australian Property Council 'Method of Measurement' effective March 1997.
- (d) Any Dispute between the parties in relation to the form of the By-laws to be agreed for the purposes of clause 11.5(a) must be referred to an Adjudicator for resolution pursuant to clause 36.
- (e) The Council must lodge the By-laws agreed pursuant to clause 11.5(a) for registration concurrently with the application for registration of the Preliminary Strata Plan.
- (f) The parties acknowledge and agree that any special unit entitlement established pursuant to clause 11.5(c)(i) is only to apply for so long as the Crown is the registered proprietor of the New Crown Premises. If at any time the Crown transfers or otherwise disposes of its freehold interest in the New Crown Premises, the Minister must take all steps and do all things as are reasonably required to assist the Council (and any other owner of a lot within the Registered Strata Plan) to amend or remove the relevant special unit entitlement from the Registered Strata Plan in accordance with section 17 of the Strata Act so that all ongoing voting rights are in line with the general unit entitlements of each lot owner in the Registered Strata Plan. The Minister further agrees to provide such assistance as is reasonably required by the Council, at the cost of the Council, to register a caveat on the certificate of title to the New Crown Premises to prevent the Crown from transferring or otherwise dealing with its freehold interest in the New Crown Premises until the relevant special unit entitlement is amended or removed.

11.6 Requisitions

- (a) The Council will consult with the Minister in relation to any refusal by the Recorder of Titles to register the Preliminary Strata Plan or the By-laws referred to in clause 11.5.
- (b) If the Preliminary Strata Plan requires amendment in order to meet the requirements for registration in the Strata Act, the provisions of this clause 11 (with any necessary changes) will apply to making of such amendments before the re-lodgement of the Preliminary Strata Plan for registration.

12 Registration of dealings after registration of Strata Plan

12.1 Council's obligations

- (a) On the New Crown Premises Transfer Date, the Council must:
 - (i) **(Strata Plan)**: give to the Minister a copy of the Registered Strata Plan and a copy of the By-laws for the body corporate, in each case as registered by the Recorder of Titles;
 - (ii) **(title)**: supply to the Crown, a good marketable documentary title to the New Crown Premises free from encumbrances;
 - (iii) **(transfer)**: give to the Minister a transfer, in registrable form, for the purposes of the *Land Titles Act 1980* (Tas), and duly executed by the Council pursuant to which the Council transfers the New Crown Premises to the Crown;
 - (iv) **(vacant possession)**: give to the Minister:
 - (A) vacant possession of the New Crown Premises; and
 - (B) possession of the New Crown Premises Fit Out.

12.2 Minister's obligations

The Minister will promptly lodge the transfer of the New Crown Premises for registration in accordance with the *Land Titles Act 1980* (Tas).

12.3 Ownership

On the New Crown Premises Transfer Date, ownership of the New Crown Premises passes from the Council to the Crown.

12.4 Adjustment of Statutory Charges

- (a) All Statutory Charges payable in respect of the Council's ownership of the New Crown Premises must be paid by the Council to the end of the current financial year in which Completion takes place.
- (b) The payments required by clause 12.4(a) may be made after the New Crown Premises Transfer Date if the Council gives to the Crown's lawyers at Completion a written undertaking to pay the Statutory Charges payable by the Council.
- (c) The Crown will be responsible for all Statutory Charges against the New Crown Premises and the Crown Car Parks because of a reassessment following the New Crown Premises Transfer Date.

13 Grant of Crown Car Parks Lease

- (a) On the New Crown Premises Transfer Date, the Council must grant to the Minister the Crown Car Parks Lease:
 - (i) commencing on the Date of Practical Completion of the Car Park;
 - (ii) for a rental of \$1.00 per annum;
 - (iii) for an initial term of 10 years;
 - (iv) which contains eight options for a further term of 10 years each;
 - (v) where the options are automatically exercised by the Minister unless the Minister otherwise gives notice to the Council; and
 - (vi) the lease is otherwise capable of registration with the Recorder of Titles pursuant to the *Land Titles Act 1980* (Tas).
- (b) The Minister is not obliged to execute the Crown Car Parks Lease until the Date of Practical Completion of the Car Park.
- (c) Within 20 Business Days after the Date of Practical Completion of the Car Park, the Council must give the Minister:
 - (i) a detailed dimensioned survey plan of the Crown Car Parks as constructed which is in a form that is suitable to allow for registration of the Car Park Lease under the *Land Titles Act 1980* (Tas); and
 - (ii) a certificate from the Council's surveyor stating the number of Crown Car Parks (as constructed).
- (d) The Council will prepare the Crown Car Park Lease in registrable form for the purposes of the *Land Titles Act 1980* (Tas) within 30 Business Days after the later of:
 - (i) the Date of Practical Completion of the Car Park; and
 - (ii) the receipt of the survey plans for the Crown Car Parks.
- (e) The Crown Car Parks Lease must be completed in accordance with any instructions embedded in the form of lease in 'Attachment 5: Crown Car Parks Lease' and by inserting, where applicable:
 - (i) the current title reference to the Land;
 - (ii) the Commencement Date and the Expiry Date (as each is defined in the Crown Car Parks Lease);
 - (iii) a survey plan of the Crown Car Parks; and
 - (iv) any other detail that needs to be completed or inserted in the Crown Car Parks Lease as agreed in writing between the Minister and the Council.
- (f) Once the Crown Car Parks Lease is completed, the Council must promptly submit it to the Minister for execution.
- (g) The Minister must promptly execute the completed Crown Car Parks Lease received from Council and subsequently return the executed lease to Council for execution.

- (h) Following receipt of the completed Crown Car Parks Lease executed by the Minister, the Council must, at its own cost:
- (i) execute the completed Crown Car Parks Lease;
 - (ii) formally obtain the consent of each mortgagee of that part of the Council Land comprising the Car Park to the grant of the Lease, in a form and substance, so as to enable registration in accordance with the *Land Titles Act 1980* (Tas);
 - (iii) obtain any certificate required under the *Local Government (Building and Miscellaneous Provisions) Act 1993* (Tas) required to facilitate registration of the lease in accordance with *Land Titles Act 1980* (Tas);
 - (iv) have the lease registered on the certificate of title to the relevant part of the Council Land comprising the Car Park in accordance with the *Land Titles Act 1980* (Tas); and
 - (v) following registration give a registered copy of the Crown Car Parks Lease to the Minister.

14 Grant of DOE Premises Lease

- (a) Not later than six weeks from the date of this Agreement, the Minister must notify the Council in writing as to which one of the two proposed areas shown on the plan contained in Attachment 7 - 'Plan of DOE Premises' the Minister elects to lease from the Council as the DOE Premises.
- (b) Provided that the Minister has complied with clause 14(a), within 15 Business Days following the Strata Plan Registration Date and the issue of certificates of title to the lots created by that plan, the Council must grant to the Minister a lease:
 - (i) of the DOE Premises together with the right to use the common areas of the Multi Purpose Building being the entrances, exits, fire escapes, foyers, corridors, toilets (including disabled toilets), showers, tea rooms, lifts and stairways and bike racks of the Multi Purpose Building and any other areas set aside by the Council as landlord for general use of the Minister and other occupiers or users of the Multi Purpose Building;
 - (ii) commencing on the Date of Practical Completion of the Multi Purpose Building;
 - (iii) for an initial term of three years;
 - (iv) which contains two options for a further term of three years each;
 - (v) for a rental:
 - (A) of \$1.00 per annum for the first two three-year terms;
 - (B) determined at the commencement date of the second further term of the lease in accordance with the current market rent as agreed by the parties or in absence of agreement as determined by an expert appointed by the parties, or in absence of agreement an expert as appointed by the President (or other senior officer) for

the time being of the Law Society of Tasmania (or its successor body); and

- (C) determined at the commencement date of the second and third years of the lease for the second further term being the rent payable during the preceding year of the lease term increased by 2.5%;
 - (vi) with the Minister being responsible for Rates and Taxes (as defined in the Crown Car Park Lease and amended as necessary) and all other building outgoings/expenses commonly payable by a tenant in similar office premises (including an appropriate proportionate contribution to any body corporate levies assessed or levied against the land of which the DOE Premises forms part);
 - (vii) for a permitted use of a Government Online Access Centre and all reasonably necessary purposes ancillary to that use;
 - (viii) which requires the Minister to hand back the space to Council in the event the premises cease to be used for the purposes of a Government Online Access Centre;
 - (ix) that grants the Minister the ability to sublet;
 - (x) which is capable of registration with the Recorder of Titles pursuant to the *Land Titles Act 1980* (Tas); and
 - (xi) otherwise on terms and conditions similar to the Crown Car Parks Lease as applicable,
- (the **DOE Premises Lease**).
- (c) The Council will prepare the DOE Premises Lease in accordance with clause 14(b) together with any amendments that may be required in respect of the description of the DOE Premises.
 - (d) The Minister is not obliged to execute the DOE Premises Lease until the Date of Practical Completion of the Multi Purpose Building.
 - (e) Within 20 Business Days after the Date of Practical Completion of the Multi Purpose Building, the Council must give the Minister a detailed dimensioned survey plan of the DOE Premises as constructed which is in a form that is suitable to allow for registration of the DOE Premises Lease under the *Land Titles Act 1980* (Tas).
 - (f) The Council will prepare the DOE Premises Lease in registrable form for the purposes of the *Land Titles Act 1980* (Tas) within 30 Business Days after the later of:
 - (i) the Date of Practical Completion of the Multi Purpose Building; and
 - (ii) the receipt of the survey plans for the Multi Purpose Building.
 - (g) The DOE Premises Lease must be completed by including, where applicable:
 - (i) the current title reference to the DOE Premises;
 - (ii) the Commencement Date and the Expiry Date;
 - (iii) a survey plan of the DOE Premises; and

- (iv) any other detail that needs to be completed or inserted in the DOE Premises Lease as agreed in writing between the Minister and the Council.
- (h) Once the DOE Premises Lease is completed, the Council must promptly submit it to the Minister for execution.
- (i) The Minister must promptly execute the completed DOE Premises Lease received from Council and subsequently return the executed lease to Council for execution.
- (j) Following receipt of the completed DOE Premises Lease executed by the Minister, the Council must, at its own cost:
 - (i) execute the completed DOE Premises Lease;
 - (ii) formally obtain the consent of each mortgagee of that part of the Council Land comprising the DOE Premises to the grant of the Lease, in a form and substance, so as to enable registration in accordance with the *Land Titles Act 1980* (Tas);
 - (iii) obtain any certificate required under the *Local Government (Building and Miscellaneous Provisions) Act 1993* (Tas) required to facilitate registration of the lease in accordance with *Land Titles Act 1980* (Tas);
 - (iv) have the lease registered on the certificate of title to the relevant part of the Council Land comprising the DOE Premises in accordance with the *Land Titles Act 1980* (Tas); and
 - (v) following registration give a registered copy of the DOE Premises Lease to the Minister.

PART 3: DELIVERY OF STAGE 1 WORKS

15 Development restriction

Prior to the Strata Plan Registration Date, the Council must not carry out any development on the Council Land other than the Project.

16 Council's reporting and related obligations

16.1 Reporting before Steering Committee meetings

At least two Business Days prior to each proposed meeting of the Steering Committee, the Council must provide a written report to the Minister, in a form approved by the Minister, setting out:

- (a) the progress and status of the construction of the Project (including the anticipated date on or by which the Council expects the Builder to achieve Practical Completion for the relevant components of the Stage 1 Works);
- (b) details of any Milestone Events which are behind the anticipated Milestone Date;
- (c) any foreseen delays to the Milestone Dates for upcoming Milestone Events;

- (d) the likely effect on the Milestone Dates of any actual or foreseen delays;
- (e) the status of all activities on which work is being undertaken;
- (f) details of all consultants currently employed or proposed to be employed by the Council or otherwise in connection with the Stage 1 Works, and manpower allocation to achieve Practical Completion for a relevant component of the Stage 1 Works;
- (g) as a percentage and as a dollar amount, the amount of the budget for the Stage 1 Works which has been expended as at that date;
- (h) site safety status reports, including details of lost time from injuries;
- (i) strategies implemented or proposed to overcome problems, including corrective action statements for catching up on delays or lost time or avoiding potential delays;
- (j) the progress in obtaining any Approvals;
- (k) industrial relations issues affecting or which may affect the Stage 1 Works;
- (l) the status of any disputes that have arisen in connection with the Stage 1 Works; and
- (m) any other matter required by the Minister (acting reasonably).

16.2 General reporting obligation

The Council must provide to the Minister, in a form approved by the Minister and within a reasonable time of being requested to do so, written reports in relation to the following matters as and whenever required by the Minister (acting reasonably):

- (a) any matter concerning the Stage 1 Works or the Project which the Minister reasonably requires;
- (b) any finds of Historical Artefacts;
- (c) the presence or discovery of Hazardous Substances;
- (d) any industrial relations issues affecting the progress of the Stage 1 Works;
- (e) any major safety incidents affecting the progress of the Stage 1 Works.

16.3 Remedial action

The Council must advise the Minister promptly (in writing, if the Minister requires) of suitable courses of action in relation to matters raised in Steering Committee meetings.

16.4 Notification of Default Event

The Council must immediately notify the Minister in writing of any Default Event.

16.5 Records in relation to Project

The Council must establish, maintain and make available to the Minister for inspection in Devonport all records and registers:

- (a) which the Minister from time to time reasonably requires in connection with the Project;
- (b) which a prudent and sophisticated developer would establish and maintain in relation to a development project of the kind being undertaken by the Council;

- (c) which a prudent and sophisticated builder would establish and maintain in relation to the execution of building works similar to the Stage 1 Works; and
- (d) concerning the Project which the Council is required to establish and maintain at Law.

17 Minister's inspections

- (a) The Minister may at all reasonable times and upon reasonable notice to the Council, enter any part of the Council Land then occupied by the Council or the Council's Agents:
 - (i) to inspect the status of the Stage 1 Works;
 - (ii) to ascertain the Council's compliance with its obligations under this Agreement or any other Project Document;
 - (iii) to verify any matter contained in a report provided by the Council to the Minister; or
 - (iv) to ascertain any matter in respect of which the Council is required to report to the Minister under this Agreement.
- (b) If the Minister exercises his or her right to enter the Council Land under clause 17(a), the following conditions apply:
 - (i) the Minister must give prior notice to the Council of his or her intention to enter and inspect the Council Land;
 - (ii) other than in the case of urgency, the Council must receive the notice at least two Business Days before the Minister enters and inspects the Council Land;
 - (iii) the Council or the Council's nominated representative, may accompany the Minister; and
 - (iv) the Minister must comply (and must procure that any Crown's Agent attending with the Minister complies) with the Council's and the Council's Agents reasonable requirements in relation to site safety and must not unreasonably and unnecessarily interfere with or disrupt the Council's or the Council's Agent's operations.
- (c) The Minister's Rights under this clause 17 may be exercised by any employee or officer employed in the Department.
- (d) Nothing in this clause 17 limits the Minister's Rights under any Law, any other provision of this Agreement or any other Project Document.

18 Minister's consultants

- (a) The Minister may engage consultants to investigate and report to the Minister in relation to any matter referred to in clause 17(a).
- (b) The Council must (within reason) cooperate, and must ensure that the Council's Agents (within reason) cooperates, with any such consultants engaged by the Minister.

19 Stage 1 Works

19.1 General construction obligations

The Council must procure the construction and completion of the Stage 1 Works:

- (a) in accordance with:
 - (i) the Stage 1 Plans;
 - (ii) the Preliminary Strata Plan; and
 - (iii) this Agreement and any other Project Documents;
- (b) in conformity, and so as to ensure compliance, with:
 - (i) all Approvals (and in the case of the Planning Permit, the Council must comply with all conditions contained in the Planning Permit which are expressed to be imposed on 'the owner' or 'the Council');
 - (ii) all applicable Laws, including Laws relating to:
 - (A) building;
 - (B) the environment;
 - (C) the treatment, removal and/or disposal of Hazardous Substances including contaminated soil; and
 - (D) workplace health and safety;
 - (iii) the requirements of any relevant Government Body (including all directions, notices and orders issued by any Government Body); and
 - (iv) relevant Australian Standards;
- (c) in a timely manner so as to achieve each Milestone Event by the relevant Milestone Date (as such date may be extended under this Agreement);
- (d) using materials of merchantable quality which are fit for their Stated Purpose;
- (e) using Good Design and Construction Practices; and
- (f) in such a manner so as to:
 - (i) ensure that no Loss is caused to any person (including the Crown) and no physical damage is caused to any property adjacent to or in the vicinity of, the Council Land; and
 - (ii) prevent nuisance and disturbance so far as practicable.

19.2 Completion

The Council must reach the stage of Practical Completion for each component of the Stage 1 Works on or before the relevant Date for Practical Completion of that component.

19.3 Rectification of Defects identified during construction

- (a) The Council must, at its cost and expense, and in a proper and workmanlike manner, promptly (and in any event within a reasonable time) rectify any Defects in the New Crown Premises Fit Out which are notified by the Minister to the Council in writing before the Date of Practical Completion.

- (b) If there is a dispute between the Minister and the Council in relation to the rectification of any Defects in the New Crown Premises Fit Out (including any dispute as to what constitutes a reasonable time to rectify a Defect) which are notified to the Council pursuant to clause 19.3(a), the Minister or the Council may give to the other a Dispute Notice.
- (c) If the Minister or the Council gives a Dispute Notice and the matters in dispute are not resolved by agreement within the period of 10 Business Days after the giving of the Dispute Notice, the matters in dispute in relation to the rectification of any Defects will be determined by an Adjudicator.

19.4 Safety and preservation work to prevent deterioration

The Council must do such things as may be reasonably required to:

- (a) protect and secure the Stage 1 Works against trespassers;
- (b) treat, seal and cover all surfaces of the Stage 1 Works to prevent deterioration; and
- (c) make safe the Stage 1 Works and the Council Land, insofar as it relates to the Multi-Purpose Building.

19.5 No Asbestos

The Council must ensure that none of the materials used in the Stage 1 Works contain Asbestos.

19.6 Hoardings

- (a) The Council must erect and maintain Hoardings around the Council Land.
- (b) The Council must:
 - (i) not use the Hoardings for advertising except to the extent authorised in writing by the Minister;
 - (ii) keep all Hoardings free from, and remove, all graffiti, unauthorised advertising, posters and bills; and
 - (iii) otherwise maintain the Hoardings in a clean and tidy condition.

19.7 Obtaining Approvals

- (a) The Council must obtain and maintain all Approvals to lawfully carry out the Stage 1 Works.
- (b) If the Council makes an application in relation to the Stage 1 Works to any Government Body for an Approval, the Council must as soon as reasonably practicable provide an identical copy of that application to the Minister.

19.8 New Crown Premises equipment

- (a) Ownership of all equipment installed in the New Crown Premises including the New Crown Premises Fit Out, as part of the Stage 1 Works, vests in the Crown on the date that the transfer referred to in clause 12.1(a)(iii) and vacant possession of the New Crown Premises is given to the Minister pursuant to clause 12.1(a)(iv).
- (b) The Council must ensure that the equipment referred to in clause 19.8(a) is, at the time of its vesting in the Crown, free from all Security Interests (except for any Security Interest created by the Crown).

- (c) For the purposes of this clause, Security Interest means:
- (i) a 'security interest' for the purposes of the *Personal Property Securities Act 2009* (Cwlth); and
 - (ii) any mortgage, charge, bill of sale, pledge, deposit, lien, hypothecation, arrangement for the retention of title and any other interest or power given by way of security for any debt, monetary liability or other obligation,
- and includes any agreement to grant or create any of the foregoing.

19.9 Post-occupation contingency

- (a) For the period commencing on the Date of Practical Completion for that part of the Stage 1 Works comprising the Multi-Purpose Building and ending on the date which is 12 months after that date, the Council must make available to the Minister the Contingency Amount for expenditure on works to, or additional items of fit out within, the New Crown Premises as are reasonably required by the Minister to make the New Crown Premises fully operable.
- (b) The Council must make available all or part of the Contingency Amount required by the Minister within 15 Business Days of written notice by the Minister to the Council, up to the amount of \$100,000.00 (exclusive of GST).
- (c) Any works or fit out carried out by the Minister pursuant to this clause 19.9 are done so at the sole risk of the Minister.
- (d) The Minister cannot require the Council or the Builder to carry out such works or fit out.
- (e) The Council is entitled to retain any part of the Contingency Amount not expended by the Minister within the 12 month period referred to in clause 19.9(a).

20 Testing of materials and work

20.1 Minister may order tests

- (a) The Minister may at any time prior to the Date of Practical Completion direct that any services or plant and equipment forming part of the New Crown Premises Fit Out whether or not in the New Crown Premises or the Multi Purpose Building must be tested.
- (b) If the Minister gives such a direction, the Council must promptly prepare and make available for testing the services or plant and equipment specified in the direction and give the Minister prompt notice that the same are so available.
- (c) Tests will be conducted by a person nominated by the Minister (acting reasonably) under the supervision of the Council or a relevant Council's Agent.

20.2 Notice of tests

Before conducting a test under this Agreement, the Minister must give reasonable notice in writing to the Council of the time, date and place of the test. If the Council does not attend, then the test may nevertheless proceed.

20.3 Results of tests

Results of any tests by the Minister must be promptly made available to the Council.

20.4 Costs of testing

All reasonable costs of and incidental to testing (including any delay costs incurred by the Council or a the Council's Agents as a result of the tests) must be paid by the Minister except where the testing shows that the material or work was not in accordance with this Agreement, in which case all such costs must be borne by the Council.

21 Council's Variations

21.1 Council not to make Variations to Stage 1 Works

The Council must not make any Variation in relation to the Stage 1 Works(except in accordance with clauses 21, 22 or 24.

21.2 Council's initiated Variations to Stage 1 Works

- (a) The Council does not require the Minister's approval for a Variation in relation to any Stage 1 Works where the Variation will not:
 - (i) have any detrimental impact on the New Crown Premises, the Common Areas, the Crown Car Parks or the New Crown Premises Fit Out;
 - (ii) materially change the intent of the Project;
 - (iii) cause any Loss to the Minister; or
 - (iv) delay the Date for Practical Completion of the Multi-Purpose Building.
- (b) Prior to lodging any request for a Variation with the Builder (being a Variation not of the kind referred to in clause 21.2(a)), the Council may request the Minister approve a Variation to any Stage 1 Works at any time before the Date for Practical Completion for the relevant component of the Stage 1 Works affected by the proposed Variation. A request by the Council for the Minister to approve a Variation Stage 1 Works under this clause 21.2(b):
 - (i) be in writing;
 - (ii) be signed by or on behalf of the Council;
 - (iii) contain a clear statement that it is a request for a Variation made pursuant to this clause 21.2 and be titled '**the Council Variation Request Notice**';
 - (iv) be accompanied by proposed drawings and specifications setting out the proposed Variation to the Stage 1 Works;
 - (v) be accompanied by a statement showing the length of time required to complete the work associated with the proposed Variation and the effect of the proposed Variation on the resources of the Council, the timing and sequence of activities and any Milestone Date; and
 - (vi) be accompanied by a statement:
 - (A) giving the reasons for the Variation to the Stage 1 Works; and
 - (B) setting out how the Minister will be compensated for any Loss as a result of the proposed Variation.

- (c) The Minister must not unreasonably withhold his or her approval to a Variation requested by the Council to any Stage 1 Works where the Variation is reasonably necessary:
 - (i) to ensure that the Project complies with the Law;
 - (ii) to ensure that the Stage 1 Works comply with this Agreement;
 - (iii) to correct a design error or omission in the Project Design Documentation;
 - (iv) because of the unavailability of materials specified in the Project Design Documentation (other than as a result of any act or omission of the Council or a the Council's Agent); or
 - (v) because of site conditions encountered during construction and which were not foreseen.

21.3 Approval or rejection by Minister of Variation to Stage 1 Works

- (a) Not later than 15 Business Days after receiving a Council Variation Request Notice, the Minister must notify the Council in writing whether the Minister approves or rejects the Variation to the Stage 1 Works requested by the Council in that notice.
- (b) If the Minister neither approves nor rejects the Variation requested by the Council in the Council Variation Request Notice within that period of 15 Business Days, the Minister will be taken to have given a notice to the Council approving the Variation requested by the Council on the next Business Day after the expiry of that period. The Council will be taken to have received that notice on that Business Day.

21.4 Approval of Variation to Stage 1 Works by Minister

If the Minister approves the Variation requested by the Council in accordance with clause 21.2, the Council must implement the Variation in the execution of the Stage 1 Works and compensate the Minister for any Loss incurred, paid or payable by either of them as a result of the Variation.

21.5 Dispute resolution process

If a dispute arises in respect of this clause 21, the dispute will be determined in accordance with clause 23.

22 Minister's directed Variations to Stage 1 Works

22.1 Directed Variations related to compliance etc.

- (a) The Minister may by notice in writing to the Council direct the Council to procure the Builder to undertake a Variation to the Stage 1 Works but only insofar as those works relate to the New Crown Premises, the Common Property or the New Crown Premises Fit Out provided that:
 - (i) the proposed Variation does not have a material adverse impact on the structural or operational integrity of the building;
 - (ii) the proposed Variation complies with any Law;
 - (iii) any Approvals relating to the proposed Variation can be obtained; and

- (iv) the proposed Variation will not materially delay the Date for Practical Completion.
- (b) A notice by the Minister pursuant to clause 22.1(a) must:
 - (i) be in writing;
 - (ii) be signed by or on behalf of the Minister;
 - (iii) contain a clear statement that it is a direction for a Variation made pursuant to clause 22.1 and be titled '**Minister's Variation Direction Notice**'; and
 - (iv) be accompanied by a detailed statement giving the reasons for the Variation requested pursuant to 22.1(a).

22.2 Agreement or rejection by Council of Variation to Stage 1 Works

- (a) Not later than 15 Business Days after receiving a Minister's Variation Direction Notice, the Council must notify, in writing, the Minister whether the Council agrees to, or rejects, the Variation set out in the Minister's Variation Direction Notice.
- (b) If the Council neither agrees to, nor rejects, the Variation directed in the Minister's Variation Direction Notice within that period of 15 Business Days, the Council will be taken to have given a notice to the Minister rejecting the Variation directed by the Minister on the next Business Day after the expiry of that period. The Minister will be taken to have received that notice on that Business Day.

22.3 Submission of Variation to Builder for approval and costing

- (a) If the Council agrees to procure the carrying out the Variation set out in the approved Minister's Variation Direction Notice, the Council must, within 10 Business Days after receiving that notice, submit the Variation to the Builder for the purposes of approval and costing by the Builder pursuant to the provisions of the Building Contract.
- (b) If the Builder objects to the Variation set out in the approved Minister's Variation Direction Notice and the Minister does not agree with the grounds of objection, the Council will, on behalf of the Minister, refer the matters in dispute for determination in accordance with the provisions of the Building Contract.
- (c) If the Builder does not object to the Variation set out in the approved Minister's Variation Direction Notice, the Council will procure from the Builder and provide to the Minister, within 10 Business Days after receipt of the approved Minister's Variation Direction Notice, written notice specifying the cost of the Variation to be paid in accordance with clause 22.5 (**Variation Cost**).
- (d) If the Minister disputes the Variation Cost it may request the Council to refer the matter in dispute for determination in accordance with the provisions of the Building Contract.
- (e) Within 10 Business Days of:
 - (i) receipt of the Variation Cost; or
 - (ii) if a dispute is referred to determination under clause 22.3(d), the resolution of that dispute;

the Minister advise the Council in writing whether the Minister wishes to proceed with the Variation set out in the approved Minister's Variation Direction Notice.

- (f) If the Minister advises the Council that the Minister does not wish to proceed with the Variation set out in the approved Minister's Variation Direction Notice, there will be no variation to the Stage 1 Works.

22.4 Agreement to carry out directed Variation

If:

- (a) the Builder does not object to the Variation in the approved Minister's Variation Direction Notice; and
- (b) the Minister approves the Variation Cost,

the Council must procure the Builder to implement the Variation in the execution of the Stage 1 Works pursuant to the Building Contract as soon as is practicable.

22.5 Payment of Variation cost

The Minister must pay the Variation Cost invoiced to the Council by the Builder in undertaking the Variation in the approved Minister's Variation Direction Notice within 10 Business Days of receipt of a claim for payment received by the Council from the Builder or the Superintendent.

22.6 Dispute resolution process

If a dispute arises in respect of this clause 22, the dispute will be determined in accordance with clause 23.

23 Dispute resolution process for Variations to Stage 1 Works

- (a) This clause 23 applies if:
 - (i) pursuant to clause 21.3, the Minister gives, or is taken to have given, a notice to the Council rejecting a Variation to any Stage 1 Works requested by the Council in accordance with clause 21.2; or
 - (ii) pursuant to clause 22.2, the Council gives, or is taken to have given, a notice to the Minister rejecting a Variation to any Stage 1 Works directed by the Minister in accordance with clause 22.1,
 (each a **Variation Rejection Notice**).
- (b) If, not later than 15 Business Days after the date of the Minister's or the Council's receipt (or deemed receipt) as may be applicable of the Variation Rejection Notice, the Minister and the Council agree in writing the form and content of the Variation to the Stage 1 Works, the Council must carry out the Variation in accordance with that agreement.
- (c) If the Minister and the Council make no such agreement within the period of 15 Business Days after the date of Minister's or the Council's receipt (or deemed receipt) as may be applicable, of the Variation Rejection Notice:
 - (i) the Minister not later than 10 Business Days after receiving the Variation Rejection Notice may give a Dispute Notice to the Council, but if and only if, the Minister reasonably considers that the Variation is necessary for a reason set out in clause 22.1; or

- (ii) the Council not later than 10 Business Days after receiving the Variation Rejection Notice, may give a Dispute Notice to the Minister but if, and only if, the Council considers that the Minister has unreasonably refused to approve the Variation requested in clause 21.2.
- (d) Subject to clause 23(e), an Adjudicator appointed to determine the dispute in respect of the Dispute Notice issued under clause 23(c), may:
 - (i) approve the Variation requested by the Council;
 - (ii) direct the Council to carry out the particular Variation to the Stage 1 Works requested by the Minister or the Council (as the case may be);
 - (iii) direct the Council to compensate the Minister for any Loss as a result of the Variation (including directions as to the amount and timing of any payment of compensation, which must be in the form of a lump sum payment); or
 - (iv) confirm the Minister's or the Council's decision, as applicable, to reject the Variation.
- (e) An Adjudicator may only direct a Variation to the Multi Purpose Building if, and only if:
 - (i) in the opinion of the Adjudicator the Variation requested by the Council or directed by the Minister, as may be applicable, or the Variation directed by the Adjudicator, is necessary for a reason set out in clause 21.1 or clause 22.1 as may be applicable; and
 - (ii) the Minister is compensated by the Council for any Loss as a result of the Variation, and the arrangements for the payment of compensation are approved in writing by the Minister.
- (f) Except to the extent that a Variation to the Stage 1 Works is required for a reason set out in clause 21.1 or clause 22.1, the Adjudicator has no power to approve or direct a Variation to the Stage 1 Works.
- (g) Regardless of the decision of the Adjudicator, the Council cannot make any Claim against the Minister on the grounds that the Minister unreasonably refused, or refused to give, his or her consent to a Variation requested by the Council under this clause 21.2.

23.2 Council responsible for costs of Variation

The party requesting the Variation will be responsible for the costs of any Variation made under this clause 23.

24 Minister's requested Variation to New Crown Premises Fit Out

24.1 Interpretation

In this clause 24:

Cost and Time Estimate has the meaning in clause 24.3.

Instruction to Proceed Notice means a notice (marked 'Instruction to Proceed Notice') from the Minister to the Council instructing the Council to proceed with procuring a Minister Requested Variation.

Minister Requested Variation has the meaning in clause 24.2.

24.2 Variations requested by Minister

- (a) Subject to this clause 24, the Minister may request a Variation to the New Crown Premises Fit Out not later than three months' prior to the Date of Practical Completion for the Multi-Purpose Building(**Minister Requested Variation**).
- (b) The Council is not required to procure the carrying out of any Minister Requested Variation unless the Minister has:
 - (i) accepted in writing a Cost and Time Estimate in respect of that variation pursuant to clause 24.3; or
 - (ii) given to the Council an Instruction to Proceed Notice.

24.3 Council to give cost and time estimate for proposed variations

Within 15 Business Days of receiving a request under clause 24.2, the Council must procure from the Builder and submit in writing to the Minister the following (collectively a **Cost and Time Estimate**):

- (a) a detailed fixed price for the proposed Minister Requested Variation (supported by evidence) showing:
 - (i) the sum of the costs of design, preliminaries (if applicable), materials, plant costs and labour for executing the Minister Requested Variation if accepted by the Minister (after giving credit for any cost savings to the Council because of the Minister Requested Variation); and
 - (ii) any extra costs or expenses which will be incurred by the Council arising out of or in connection with the Minister Requested Variation delaying the progress of the Stage 1 Works;
- (b) if the proposed Minister Requested Variation will affect the progress of the Stage 1 Works:
 - (i) (if required by the Minister) the length of time required to complete the work associated with the proposed Minister Requested Variation and the effect of the proposed Minister Requested Variation on the resources of the Council, the timing and sequence of activities and any other relevant Milestone Date or Milestone Event;
 - (ii) a statement describing the effect that the Minister Requested Variation will have on the completion of the Project; and
 - (iii) a statement setting out any extension of time required by the Council to the Date for Practical Completion for the Multi-Purpose Building in connection with the Minister Requested Variation;
- (c) if the Minister Requested Variation will impact on any of the Council's obligations under this Agreement, a statement setting out the nature of the impact and whether those impacts can be avoided; and
- (d) any other information that the Minister may reasonably require in connection with the proposed Minister Requested Variation.

24.4 Minister may accept or reject estimate

- (a) Within 15 Business Days of receiving a Cost and Time Estimate the Minister must notify the Council whether the Minister accepts or rejects the Cost and Time Estimate.
- (b) If the Minister gives notice in writing to the Council accepting a Cost and Time Estimate:
 - (i) the design documentation relevant to the New Crown Premises Fit Out works will be amended to incorporate the Minister Requested Variation; and
 - (ii) the Council must procure the Builder to carry out the Minister Requested Variation as part of the Stage 1 Works in accordance with the Cost and Time Estimate and otherwise on the terms of this Agreement.
- (c) If the Minister rejects a Cost and Time Estimate, the Minister may still require the Minister Requested Variation to be completed by the Council by giving an Instruction to Proceed Notice to the Council. If the Minister and the Council are unable to agree a price for the Minister Requested Variation detailed in the Instruction to Proceed Notice and the basis upon which the Minister Requested Variation is to be executed (including any extension to the Date for Practical Completion for the Multi-Purpose Building), a Dispute will be taken to exist and matters in dispute in relation to the Minister Requested Variation will be determined by an Adjudicator.
- (d) In determining the price payable by the Minister, an Adjudicator must apply the valuation mechanism to be applied for variations as stated in the Building Contract.
- (e) Payment for a Minister Requested Variation will be made on progress certificates submitted by the Builder to the Council at the end of each month during which any work in connection with the Minister Requested Variation is executed.
- (f) A progress certificate is payable within 15 Business Days of the certificate being provided to the Minister. The amount specified in a progress certificate is to be:
 - (i) that amount which bears the same proportion to the cost for the Minister Requested Variation as the work completed in relation to that Minister Requested Variation as at the date of the progress certificate bears to all of the work required in relation to that Minister Requested Variation;
 - less:
 - (ii) the total of all amounts previously claimed by the Council in relation to that Minister Requested Variation.

24.5 Excluded variations

Nothing in this clause 24 requires the Council to carry out any Minister Requested Variation which would:

- (a) materially change the layout, area or configuration of the New Crown Premises;
- (b) involve or require any significant structural works;
- (c) involve or require any amendment or change to or be breach of the Planning Permit; or

- (d) materially delay the completion of the Stage 1 Works.

24.6 No variation work by Minister

The Minister is not permitted to engage separate contractors or suppliers to perform any variation work within the New Crown Premises before the Date of Practical Completion.

25 Delays and extensions of time affecting Stage 1 Works

25.1 Delays that entitle Council to claim extension

The Council may claim an extension to the Date for Practical Completion if the completion of the Stage 1 Works are or will be delayed by:

- (a) **(force majeure)**: any Force Majeure Event;
- (b) **(strikes)**: any lock-out, strike or industrial dispute (other than any reasonable strike action taken by a person because of conditions on the Council Land which are within the Council's, or the Council's Agent's, immediate control);
- (c) **(Approvals)**: any delay of any Government Body in giving any necessary Approval provided that delay did not arise from a failure on the part of the Council or the Council's Agents;
- (d) **(plant or materials)**: any inability to obtain plant or materials required in connection with the Project, and the Council and each the Council's Agents having expended all reasonable efforts to obtain the same;
- (e) **(weather)**: Inclement Weather or conditions resulting from Inclement Weather;
- (f) **(variations)**: a Variation to the Stage 1 Works made in accordance with this Agreement;
- (g) **(neighbours)**: any proceedings being taken or threatened by or disputes with neighbouring owners and occupiers;
- (h) **(miscellaneous)**: any other matter, cause or thing beyond the reasonable control of the Council or the Council's Agents (but not to the extent caused by a lack of financial, human or technical resources);
- (i) **(Historical Artefacts)**: the discovery of Historical Artefacts on the Council Land which are protected or are required to be preserved or treated in a particular manner or require investigation or excavation in situ;
- (j) **(Laws)**: a change in Law which comes in to effect after the date of this Agreement (other than a Law with respect to taxation): which requires a Variation to be made to this Agreement to comply with the Law;
- (k) **(latent conditions)**: the discovery of any latent conditions affecting the Council Land which require additional works not part of the Stage 1 Works;
- (l) **(native title)**: any claim made under the *Native Title Act 1993* (Cwlth) in relation to the Council Land;
- (m) **(Minister's variation)**: the carrying out of any Variations requested by the Minister in accordance with clause 24.

25.2 Claims for extension to Date for Practical Completion

As soon as it is practicable to do so in respect of a delay specified in clause 25.1, the Council must give notice in writing to the Minister setting out the cause of the delay and stating a reasonable period by which the Date for Practical Completion should, in the opinion of the Council, be extended in each instance.

25.3 Extension of Date for Practical Completion if no Dispute Notice given

Unless the Minister within 10 Business Days after the receipt of the Council's claim for an extension of time gives a Dispute Notice in writing disputing the extension claimed by the Council, the Date for Practical Completion will be extended by the period specified in the notice given by the Council under clause 25.2.

25.4 Adjudicator to decide claim for extension if parties do not agree extension

If the Minister gives a Dispute Notice to the Council within the time allowed by clause 25.3 and the Council and the Minister are unable to agree the period by which the Date for Practical Completion should be extended within the period of 10 Business Days from and including the date of service of the Dispute Notice on the Council, the dispute will be determined by an Adjudicator.

26 Practical Completion

- (a) The Council must notify the Minister in writing of the anticipated Date for Practical Completion as soon as is practicable following receipt of a notice from the Builder of the date upon which the Builder anticipates that Practical Completion will be reached for a component of the Stage 1 Works.
- (b) The Council must notify the Minister in writing as soon as is practicable following the receipt by the Superintendent of a notice from the Builder that the Builder has reached Practical Completion for a component of the Stage 1 Works
- (c) Within five Days of the receipt of the notice referred to in clause 26(b), the Minister must give to the Council a list of reasons (if any) as to why the Minister believes that Practical Completion for the relevant component of the Stage 1 Works has not been reached. If the Minister fails to provide such reasons within this period, the Minister will be taken to have agreed that Practical Completion for the relevant component of the Stage 1 Works has been reached.
- (d) If the Minister provides to Council the list of reasons referred to in clause 26(c), the Council must promptly bring those reasons to the attention of the Superintendent. The Minister acknowledges and accepts that the Superintendent is not bound to agree with or accept the reasons proffered by the Minister that Practical Completion for the relevant component of the Stage 1 Works has been reached.
- (e) The relevant component of the Stage 1 Works will be taken as achieved Practical Completion when the Superintendent issues a Certificate of Practical Completion certifying that Practical Completion for the relevant component of the Stage 1 Works has been achieved.
- (f) If the Minister, acting reasonably, believes that the Superintendent has incorrectly issued a Certificate of Practical Completion for a component of the Stage 1 Works, the Council will (at the cost and direction of the Minister) invoke the dispute resolution process under the Building Contract to dispute the issue of that certificate.

27 Defects

27.1 Rectification of Defects

The Council must at its cost and expense and in a proper and workmanlike manner procure the Superintendent to direct the Builder to rectify (or procure the rectification of) any Defects in the Multi Purpose Building (including the New Crown Premises Fit Out) and which are notified by the Minister to the Council in writing (**Defect Notice**), as soon as is possible but in any event before the end of the Defects Liability Period.

27.2 Extension of Defects Liability Period

If the Superintendent has directed the Builder that there will be a separate Defects Liability Period in respect of any rectification work carried out by the Builder pursuant to clause 27.1, this separate Defects Liability Period will be 12 months commencing on the date upon which the rectification work is completed.

27.3 Minimum disruption

- (a) In this clause 27.3, Defect also includes a defect or fault in the design or construction of the Multi-Purpose Building.
- (b) The Council must ensure that any work performed in connection with the rectification of any Defect by the Builder is done so as to cause as little disruption and inconvenience as is reasonably possible to the Minister in its use and occupation of New Crown Premises or the Common Property.

27.4 Builder's failure to rectify Defects

If the Builder fails to rectify the Defects specified in a Defect Notice within a reasonable time after the giving of the Defect Notice (having regard to the nature and extent of the Defect), the Council must procure the Superintendent to have the rectification works carried out by a third party at the expense of the Builder.

27.5 Disputes in relation to rectification of Defects

- (a) If there is a dispute between the parties in relation to the rectification of any Defects (including any dispute as to what constitutes a reasonable time to rectify a Defect) or otherwise in relation to the operation of this clause 27, a party may give to the other party a Dispute Notice.
- (b) If a party gives a Dispute Notice and the matters in dispute are not resolved by agreement within the period of 10 Business Days after the giving of the Dispute Notice, the matters in dispute will be determined by an Adjudicator.
- (c) Where the Dispute relates to rectification works carried out or to be carried out by the Builder, the Council must invoke the dispute resolution process contained in the Building Contract.

28 Soft Fitout and Office Decant

28.1 Council's obligation to give access to Leased Area

The Council must give the Minister, and each Crown's Agent, access to the New Crown Premises to enable the Minister to carry out the Soft Fitout and Office Decant for the New Crown Premises during the Soft Fitout and Office Decant Period.

28.2 Carrying out the Soft Fitout and Office Decant

- (a) The Minister may carry out all or any part of the Soft Fitout and Office Decant in relation to the New Crown Premises on and from the commencement of the applicable Soft Fitout and Office Decant Period for the New Crown Premises.
- (b) If the Minister elects to carry out the Soft Fitout and Office Decant in relation to the New Crown Premises, the Minister must ensure that the Soft Fitout and Office Decant in relation to the New Crown Premises is carried out:
 - (i) in a proper and workmanlike manner;
 - (ii) in compliance with the Law; and
 - (iii) in compliance with the requirements of any Government Body.
- (c) The Council must give the Minister copies of relevant conditions, allowances and agreements in relation to the engagement of labour on the Council Land at the start of the Stage 1 Works and within 24 hours give the Minister details of any changes to them. Once it has received those copies or the details, the Minister must require everyone engaged to carry out the Soft Fitout and Office Decant in relation to the New Crown Premises to comply with those conditions, allowances and agreements so far as they relate to the Soft Fitout and Office Decant and to the extent that it is lawful for the Minister to require such compliance.
- (d) Subject to clause 28.4(b), the Minister's access to the New Crown Premises during the Soft Fitout and Office Decant Period is:
 - (i) only to carry out:
 - (A) the Soft Fitout and Office Decant; and
 - (B) inspections of the New Crown Premises (including the New Crown Premises Fit Out) and the Common Areas for Defects; and
 - (ii) at the Minister's risk, except to the extent that any loss, damage or injury is caused or contributed to by the default, breach of duty, negligence, act or omission of the Council or a Council's Agent.
- (e) Any damage to the Multi-Purpose Building caused by the Minister or a Crown's Agent, during the carrying out of the Soft Fitout and Office Decant by the Minister or a Crown's Agent must be rectified by the Minister as soon as is reasonably practicable after the damage occurs. The obligation to rectify damage does not apply to the extent that the Council is insured for any such damage and the Minister pays the insurance excess applicable to the claim in respect of such damage.

28.3 Non-compliant Works affecting Soft Fitout and Office Decant

- (a) If any part of the Stage 1 Works forming part of the New Crown Premises have not been constructed in accordance with this Agreement, and as a result the Minister suffers or incurs any Loss in carrying out the Soft Fitout and Office Decant for the New Crown Premises (including costs on account of time delays, the price of materials or labour, or alterations to equipment, trade fittings and/or fixtures, or professional fees charged to the Minister) the Council must pay or reimburse that Loss to the Minister within 15 Business Days of receiving a reasonably detailed written demand.

- (b) If the Council disputes a written demand by the Minister made under clause 28.3(a) then:
 - (i) the Council must pay any undisputed amount to the Minister within 15 Business Days of receiving the Minister's written demand;
 - (ii) the Council must give a Dispute Notice in relation to the amount that the Council disputes, and the matters in dispute will be determined by an Adjudicator acting in accordance with clause 36; and
 - (iii) the Council must pay to the Minister any further amount as determined by an Adjudicator acting under clause 36 plus interest at the Interest Rate calculated in respect of the period commencing on the date of receipt by the Council of the Minister's written demand and ending on date of payment.

28.4 Minister's obligations

- (a) In carrying out the Soft Fitout and Office Decant for the New Crown Premises, the Minister must, and must ensure that each Crown's Agent engaged to carry out the Soft Fitout and Office Decant:
 - (i) complete the Soft Fitout and Office Decant within 90 days of the Minister being provided with access to the New Crown Premises for this purpose;
 - (ii) to the extent that they are not inconsistent with this Agreement, comply with all reasonable directions or instructions given by the Council;
 - (iii) cause as little interference with the remainder of the Stage 1 Works as is reasonably practicable; and
 - (iv) to the extent that they are not inconsistent with this Agreement, comply with the reasonable directions and instructions of the Builder:
 - (A) in relation to the execution of Soft Fitout and Office Decant on the Council Land; and
 - (B) in relation to security and safety.
- (b) During the Soft Fitout and Office Decant Period:
 - (i) the Minister may use and occupy the New Crown Premises to which an Approval to lawfully occupy those premises is in force and as if the transfer of ownership of the New Crown Premises to the Minister had occurred notwithstanding that:
 - (A) the Soft Fitout and Decant Period for the New Crown Premises is continuing; and
 - (B) the transfer of ownership in the strata lot comprising the New Crown Premises has not occurred;
 - (ii) no rent, licence fee or other consideration will be payable by the Minister during any period of occupation or use of the New Crown Premises under this clause 28;
 - (iii) the use and occupation of the New Crown Premises will be at the risk of the Minister;

- (iv) the Minister will be responsible for the costs associated with all services and utilities consumed within the New Crown Premises;
 - (v) the Council will not be liable for the non-operation of any essential service in the New Crown Premises to the extent that the essential service is not capable of being operated at that time; and
 - (vi) the Minister and Crown's Agents will be entitled to use, at their risk, and at a reasonable cost, the services and site amenities of the Builder to the extent still present on the Council Land.
- (c) Where any person engaged in carrying out the Soft Fitout and Office Decant fails to comply with a reasonable direction or instruction given under clause 28.4(a), the Council may revoke the licence of that person to enter the Multi-Purpose Building once it has:
- (i) given the Minister a notice specifying the breach and its intention to revoke the licence;
 - (ii) allowed the Minister reasonable time to give reasons why the licence should not be revoked; and
 - (iii) allowed the Minister reasonable time to remedy the breach, and the Minister has failed to remedy the breach.
- (d) Clause 28.4(c) does not apply in the case of an emergency in which case the Council or the Builder may immediately revoke the licence of the relevant person.
- (e) The Minister must complete (or must procure the completion of) the Soft Fitout and Office Decant within 30 days after the relevant Date of Practical Completion of the Multi-Purpose Building.
- (f) The Minister is responsible for all costs incurred by the Minister in moving its employees and other occupants into the New Crown Premises.

28.5 Council obligations

The Council must ensure that the Stage 1 Works are carried out in such a way to allow the Minister to carry out the Soft Fitout and Office Decant without any interruption or delay subject to clause 28.4.

PART 4: CROWN'S CONTRIBUTIONS

29 Financial contribution

Within 20 Business Days of the date of this Agreement, the Minister must make a grant to the Council of \$2,000,000.00 (plus GST) to support the New Crown Premises Fit Out.

PART 5 – LOSS, INDEMNITY AND RELEASE

30 Loss and damage

30.1 Loss to Minister

- (a) The Council must carry out the Stage 1 Works in a manner which does not result in:
 - (i) the Minister suffering any Loss;
 - (ii) any damage to or destruction of any property of the Crown.
- (b) The Council must, as soon as practicable make good any damage to or destruction of property the subject of clause 30.1(a)(ii) (including the reinstatement of any destroyed property) in the case of the property of the Crown, to the satisfaction of the Minister.

30.2 Loss of third parties

- (a) The Council must carry out the Stage 1 Works in a manner which does not result in any damage to real or personal property of any third party and which does not result in a third party suffering any Loss or damage.
- (b) The Council must, as soon as practicable, make good any Loss or damage the subject of clause 30.2 or otherwise resolve any reasonable claim brought by any third party in relation to such Loss or damage.

31 Council's Indemnity

31.1 Council indemnity to Minister and Crown

The Council indemnifies the Minister and the Minister's Agents against, and must pay to the Minister or the Minister's Agent on demand by the Minister or the Minister's Agent, the amount of all Loss incurred, paid or payable by the Minister or the Minister's Agent in connection with or arising out of any, or any combination, of the following:

- (a) the carrying out of the Stage 1 Works;
- (b) the rectification of any Defect in New Crown Premises or the Common Property;
- (c) any act or omission by the Council or any the Council's Agents in connection with carrying out the Stage 1 Works or the rectification of any Defect in the New Crown Premises or the Common Property;
- (d) any breach of this Agreement by the Council;
- (e) any:
 - (i) loss, destruction or damage to real or personal property of any person (including, as applicable, real or personal property);
 - (ii) any injury to, or disease or death of any person; or
 - (iii) economic loss incurred by any,
 caused by or arising out of:

- (A) the design of the Stage 1 Works;
 - (B) the carrying out of the Stage 1 Works;
 - (C) any Defects in the Stage 1 Works;
 - (D) the rectification of any Defects in the Stage 1 Works;
 - (E) any act or omission by the Council or the Council's Agents in connection with carrying out the Stage 1 Works;
 - (F) any act or omission by the Council or any the Council's Agents in connection with carrying out the rectification of any Defect; or
 - (G) the use or occupation of the Council Land; or
- (f) the overflow or escape of anything from the Council Land attributable to the carrying out of the Stage 1 Works and/or the rectification of any Defect.

31.2 Indemnity reduction

The liability of the Council under the indemnity to the Minister or the Minister's Agent is to be reduced proportionately in respect of any Loss which directly results from:

- (a) a breach of this Agreement by the Minister or the Minister's Agent; or
- (b) any negligent, fraudulent or reckless, act or omission of the Minister or the Minister's Agent occurring after the date of this Agreement.

31.3 Indemnity limitations

The indemnity:

- (a) is a continuing obligation, separate and independent from the other obligations of the Council;
- (b) survives the termination of this Agreement;
- (c) extends to any Loss;
- (d) does not apply in relation to any Loss related to use of a registered motor vehicle where the owner would otherwise be entitled to indemnity under any compulsory insurance relating to the use of motor vehicles.

31.4 Benefit

In respect of a Minister's Agent who is not a party to this Agreement, the Minister holds the benefit of an indemnity given by the Council in favour of person on trust for the benefit of that person.

31.5 Interpretation

Nothing in clause 31.1 limits any other indemnity given in that clause.

32 Minister's indemnity

32.1 Council indemnity to Minister and Crown

The Minister indemnifies the Council and the Council's Agents against, and must pay to the Council or the Council's Agent on demand by the Council or the Council's Agent, the

amount of all Loss incurred, paid or payable by the Council or the Council's Agent in connection with or arising out of any, or any combination, of the following:

- (a) any act or omission by the Minister or any of the Minister's Agents in connection with carrying out the Stage 1 Works;
- (b) any breach of this Agreement by the Minister;
- (c) any:
 - (i) loss, destruction or damage to real or personal property of any person (including, as applicable, real or personal property);
 - (ii) any injury to, or disease or death of any person; or
 - (iii) economic loss incurred by any person, caused by or arising out of:
 - (A) the design of the New Crown Premises Fit Out; or
 - (B) any act or omission by the Minister or a Minister's Agent in connection with carrying out the Stage 1 Works.

32.2 Indemnity reduction

The liability of the Minister under the indemnity to the Council or the Council's Agent is to be reduced proportionately in respect of any Loss which directly results from:

- (a) a breach of this Agreement by the Council or the Council's Agent; or
- (b) any negligent, fraudulent or reckless, act or omission of the Council or the Council's Agent occurring after the date of this Agreement.

32.3 Indemnity limitations

The indemnity:

- (a) is a continuing obligation, separate and independent from the other obligations of the Minister;
- (b) survives the termination of this Agreement;
- (c) extends to any Loss;
- (d) does not apply in relation to any Loss related to use of a registered motor vehicle where the owner would otherwise be entitled to indemnity under any compulsory insurance relating to the use of motor vehicles.

32.4 Benefit

In respect of a Council's Agent who is not a party to this Agreement, the Council holds the benefit of an indemnity given by the Minister in favour of person on trust for the benefit of that person.

32.5 Interpretation

Nothing in clause 32.1 limits any other indemnity given in that clause.

33 Insurance

33.1 Obligation to insure Stage 1 Works

- (a) Before commencing the Stage 1 Works, the Council must, either through itself or the Builder, effect and maintain a contract works insurance policy in respect of the Stage 1 Works.
- (b) The policy must:
 - (i) be in the joint names of the Minister (on behalf of the Crown), the Council, the Council's Agents and all subcontractors (together 'the **Insured**') for their respective rights and interests, it being sufficient compliance with this clause if, in the case of subcontractors, they are identified as a group rather than being named individually;
 - (ii) cover liabilities (including each Insured's respective liability to the other Insured) in respect of loss, destruction or damage to the Stage 1 Works for the full reinstatement and replacement cost;
- (c) include cover in respect of the following:
 - (i) claim contingencies covering removal of debris/demolition costs, professional fees and expediting expenses;
 - (ii) materials associated with the Stage 1 Works whilst in storage off-site and in transit to the Council Land; and
 - (iii) damage to existing property and improvements;
- (d) be with an insurer, and otherwise on terms and conditions, approved in writing by the Minister (acting reasonably); and
- (e) be maintained for the duration of the Stage 1 Works.

33.2 Obligation to insure for public liability

- (a) Before commencing the Stage 1 Works, the Council must, either through itself or the Builder, effect and maintain a public liability policy in relation to the Stage 1 Works.
- (b) The policy must:
 - (i) be in the joint names of the Minister (on behalf of the Crown), the Council, the Council's Agents and all subcontractors (together 'the **Insured**') for their respective rights and interests, it being sufficient compliance with this clause if, in the case of subcontractors, they are identified as a group rather than being named individually;
 - (ii) cover liabilities (including the Insured's respective liability to the other Insured) in respect of:
 - (A) personal injury to, or the death of any person (excluding a person who at the time of the injury or death is defined as a worker of the Insured under any statute relating to workers' or accident compensation insurance); and
 - (B) loss, destruction or damage to any property (other than the Stage 1 Works),

arising out of or is caused by the execution of the Stage 1 Works;

- (c) provide insurance cover for an amount in respect of any one occurrence of not less than \$20,000,000.00;
- (d) include liability arising from the use of registered vehicles when being used as a tool of trade;
- (e) be with an insurer, and otherwise on terms and conditions, approved in writing by the Minister (acting reasonably); and
- (f) be maintained for the duration of the Stage 1 Works.

33.3 Obligation to insure for workers' compensation

- (a) Before commencing the Stage 1 Works, the Council must effect and maintain workers' compensation insurance covering:
 - (i) any liability, loss, claim or proceeding whatsoever, whether arising by virtue of any statute relating to workers' compensation insurance, accident compensation legislation, employer's liability, or at common law, by any person employed for the purpose of executing the Stage 1 Works; and
 - (ii) unless otherwise limited by statute, the liability provided by this insurance must be for an unlimited amount.
- (b) The policy must be maintained for the duration of the Stage 1 Works.
- (c) The Council must ensure that all subcontractors involved in the Stage 1 Works have similar insurance.

33.4 Obligation to insure against professional negligence

- (a) In this clause 33.4:
Council's Consultant means a Council's Agent engaged by the Council in relation to the design and/or supervision of the Stage 1 Works.
- (b) The Council must ensure that each Council's Consultant, whilst acting in their professional capacity in relation to the Stage 1 Works, takes out and maintains professional indemnity insurance, with a limit of indemnity at least \$10,000,000.00, indemnifying the Council's Consultant and the Council for a breach of professional duty, whether owed in contract, tort or otherwise, in connection with the Stage 1 Works.
- (c) The insurance must be maintained for a period of at least seven years after the expiry of the Defects Liability Period.
- (d) The policy must include one automatic reinstatement of the indemnity limit.
- (e) The Council must promptly inform the Minister if any of the Council's Consultant fails to maintain the required professional indemnity insurance required by this clause 33.4, the Council must effect that insurance on behalf of the Council's Consultant.

33.5 Cross liability

- (a) Where insurance is effected in joint names, the policy must provide that all conditions, agreements and endorsements (with the exception of limits of liability or indemnity) operate as if there was a separate policy of insurance, covering each of the Insured.

- (b) Each policy must provide that:
 - (i) the insurer waives all Rights, remedies or relief to which it might become entitled by way of subrogation against any of the parties comprising the Insured; and
 - (ii) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured.

33.6 Policy documents

The Council must give to the Minister:

- (a) a copy of each insurance policy (excluding the policy of insurance referred to in clause 33.4);
- (b) evidence of the currency of each insurance policy at the time each policy is renewed and at any other time upon demand by the Minister; and
- (c) a copy of each document issued by an insurer in relation to an insurance policy (excluding the policy of insurance referred to in clause 33.4).

33.7 Protection of insurances

The Council must:

- (a) as soon as is practicable notify the Minister in writing of any event (of which the Council is aware) which gives rise or might give rise to a claim under any insurance policy related to the Stage 1 Works;
- (b) as soon as is practicable notify the Minister in writing of the cancellation of any insurance policy for any reason;
- (c) comply with the requirements of each insurance policy;
- (d) not do anything which may result in:
 - (i) the cancellation of any insurance policy;
 - (ii) the refusal by an insurer to renew any insurance policy; or
 - (iii) the loss of any right to claim under an insurance policy;
- (e) not without the prior written consent of the Minister vary, rescind, cancel or terminate any insurance policy; and
- (f) do everything that is necessary or desirable to recover any moneys that are or may be due in respect of any claim or potential claim under an insurance policy, including lodging a claim and providing to the insurer or its agents any documents, information or evidence required by the insurer or its agents.

33.8 Minister may insure

If the Council fails to take out, effect or renew an insurance policy which it is required to take out, effect or renew by this clause 33, then without being obliged to do so, the Minister may:

- (a) take out or renew any such insurance policy that the Council has not taken out, effected or renewed;
- (b) pay any unpaid premium; and

- (c) recover the cost of doing so from the Council.

33.9 Council's obligations not limited

The Council's obligations and liabilities under this Agreement are not limited because of any thing in this clause 33.

PART 6: TERMINATION, REMEDIES AND DISPUTE RESOLUTION

34 Default Event

34.1 Occurrence of Default Event

If a Default Event occurs, a party (the **Non-Defaulting Party**) may give the other party (the **Defaulting Party**) a notice in accordance with this clause 34.1 (**Default Notice**). A Default Notice must:

- (a) state that it is a Default Notice under this clause 34.1; and
- (b) specify the Default Event.

34.2 Remedy Period

- (a) Subject to clause 34.2(b) and clause 34.3, upon receipt of a Default Notice the Defaulting Party must remedy (to the extent that it is capable of being remedied) the Default Event specified in the Default Notice within the Remedy Period.
- (b) Despite any other provision in this Agreement no Remedy Period applies in respect of a Default Event that is not capable of being remedied.

34.3 Extension to Remedy Period

- (a) If the Defaulting Party requires an extension to the Remedy Period it must, as soon as possible (but no later than the expiration of the current Remedy Period), give to the Non-Defaulting Party:
 - (i) a Remedy Plan; and
 - (ii) evidence that the Defaulting Party has diligently pursued and is continuing to diligently pursue a remedy but that the Default Event can not, with reasonable diligence, be remedied within the current Remedy Period.
- (b) The Non-Defaulting Party may, acting reasonably, grant, or may refuse to grant, an extension of the Remedy Period.
- (c) The Defaulting Party may, unless otherwise agreed by the Non-Defaulting Party, only apply once for an extension of the Remedy Period in respect of the Default Event specified in the Default Notice. If the Non-Defaulting Party grants an extension of the Remedy Period, the Defaulting Party must comply with the Remedy Plan.

35 Non-Defaulting Party's remedies for Default Events

35.1 Remedies

If a Default Event has occurred and the Default Event is:

- (a) capable of being remedied and is not remedied by the Defaulting Party to the Non-Defaulting Party's satisfaction (which may include the payment of compensation) within the Remedy Period; or
- (b) not capable of being remedied,

then in respect of:

- (c) a:
 - (i) Material Default - Council, the Minister (as the Non-Defaulting Party) may terminate this Agreement by notice in writing to the Council (as the Defaulting Party); and
 - (ii) Material Default - Minister, the Council (as the Non-Defaulting Party) may terminate this Agreement by notice in writing to the Minister (as the Defaulting Party),
 at any time prior to the default being remedied; and
- (d) any other Default Event, the Non-Defaulting Party's remedies will only lie in damages.

35.2 Rights and liabilities of parties following termination by Minister

- (a) If the Minister terminates this Agreement pursuant to clause 35.1(c)(i), the Minister, (in addition to any other Rights):
 - (i) require the Council to:
 - (A) repay the Purchase Price paid by the Crown or the Minister in accordance with clause 10 in full by a Bank Cheque within 12 months of the date of the Minister's termination notice issued in accordance with this clause 35.1(c)(i);
 - (B) pay interest on the Purchase Price calculated at the Interest Rate until repayment of the Purchase Price in full, interest payable under this clause 35.2(a)(i)(B) accrues on a daily basis from the date of the Minister's termination notice issued in accordance with this clause 35.1(c)(i);
 - (C) transfer the Crown Land back to the Crown (but only if the ownership in that land has been transferred to or vested in the Council prior to the termination of this Agreement);
 - (ii) if the Crown Land has not vested in or been transferred to Council, will not be required to procure the transfer of the Crown Land to Council; and
 - (iii) will not be required to take up the grant of the Crown Car Parks Lease.
- (b) No compensation of any kind is payable by the Minister, the Crown or any Crown's Agent to the Council in respect of the termination of this Agreement pursuant to clause 35.1(c)(i).

35.3 Rights and liabilities of parties following termination by Council

- (a) If the Council terminates this Agreement pursuant to clause 35.1(c)(ii), the Council, (in addition to any other Rights):
 - (i) may retain the Purchase Price paid by the Crown or the Minister in accordance with clause 10 in full; and
 - (ii) will not be required to grant the Crown Car Parks Lease to the Minister.
- (b) No compensation of any kind is payable by the Council or any Council's Agent to the Minister, the Crown or any Crown's Agent in respect of the termination of this Agreement pursuant to clause 35.1(c)(ii).

35.4 Waiver

If this Agreement is terminated for any reason, without prejudice to any Rights which the Non-Defaulting Party has under this Agreement, the Non-Defaulting Party waives any Rights it may have to pursue a claim of restitution of any kind, including a claim of unjust enrichment.

36 Settlement of disputes**36.1 Application**

This clause 36 applies to each dispute between the Council and the Minister which this Agreement provides is to be decided by an Adjudicator or in respect of which a party, being entitled to give a Dispute Notice, gives a Dispute Notice, or is taken to have given a Dispute Notice.

36.2 Requirements of Dispute Notice

A Dispute Notice, when actually given, must:

- (a) state that it is a Dispute Notice;
- (b) specify the clause under which it is given; and
- (c) specify or be accompanied by adequate particulars and any relevant written material which identifies the matters in dispute.

36.3 Appointment of Adjudicator

- (a) If the Council and the Minister are able to agree on the person to be appointed as an Adjudicator, the Adjudicator will be appointed jointly by the Council and the Minister.
- (b) If the parties are unable to agree on the appointment of an Adjudicator within the period of 10 Business Days after the issue of a Dispute Notice, either party may after the end of that period request the President (or other senior officer) for the time being of the Law Society of Tasmania (or its successor body) or his or her nominee to appoint a person as an Adjudicator to decide the matters in dispute.
- (c) If an Adjudicator is unavailable, refuses to act, dies before making a decision or is unable to decide the matters in dispute, either the Council or the Minister may request the President (or other senior officer) for the time being of the Law Society of Tasmania (or its successor body) or his or her nominee to appoint another Adjudicator to decide the matters in dispute.

- (d) In relation to disputes that concern structural work or engineering work, the Adjudicator must hold professional indemnity insurance in respect of his or her activities as Adjudicator. The level of cover provided by such insurance must be not less than \$20,000,000.00. The insurance must be maintained for a period of at least three years after the determination by the Adjudicator of the matters in dispute. The Adjudicator is entitled to recover the costs of such insurance in accordance with clause 36.7. An allowance for the costs of such insurance may be recovered by the Adjudicator as part of his or her costs for the purposes of clause 36.7. Nothing in this clause 36.3(d) is to be taken as limiting the costs of an Adjudicator for the purposes of clause 36.7.

36.4 Dispute resolution procedures to be followed by Adjudicator

An Adjudicator must:

- (a) decide the matters in dispute related to the Dispute that led to his or her appointment having regard to the requirements of this Agreement;
- (b) give both the Council and the Minister a reasonable opportunity to make submissions and to put before him or her any material which may be relevant to determining the matters in dispute; and
- (c) give written reasons for his or her decisions.

36.5 Powers of Adjudicator

An Adjudicator has the power:

- (a) subject to the matters specified in clause 36.4, to proceed to the resolution of a dispute or difference in such manner and subject to such rules as the Adjudicator and the parties agree or failing agreement as the Adjudicator in his or her absolute discretion determines is suitable for the nature of the dispute or difference; and
- (b) to engage and consult with any advisers, legal or technical, as he or she may see fit.

36.6 Adjudicator to act as expert

In making his or her decision an Adjudicator acts as an expert and not as an arbitrator. Accordingly, the Law relating to arbitration will not apply to the Adjudicator's decision or the procedures by which the Adjudicator may reach his or her decision.

36.7 Adjudicator's costs

- (a) Immediately following the appointment of an Adjudicator the parties must request an estimate of the fees, costs and expenses of the Adjudicator.
- (b) Each party must pay to the trust account of a lawyer acting for an Adjudicator an amount equivalent to 50 per cent of the estimate. If the amount paid by a party exceeds that party's liability for the Adjudicator's costs or the Adjudicator decides that the other party is to pay all of the Adjudicator's costs, the first party will be entitled to a refund of the unused part or the whole (as the case may require) of the amount paid by the first party towards the estimate.
- (c) If a party fails to pay an amount under clause 36.7(b) payable by that party and the Adjudicator will not proceed to determine the matter in dispute unless the estimate is prepaid, the other party may pay that amount (which amount will then be a debt, payable on demand, owed by the party failing to make that payment to the other party making the payment).

- (d) The parties must pay an Adjudicator's costs (including the costs of engaging and consulting advisers pursuant to clause 36.5(a) in the proportions decided by the Adjudicator. If an Adjudicator gives no decision as to the payment of costs, the parties must pay those costs equally.

36.8 Decision of Adjudicator

The decision of an Adjudicator will be final and binding on the parties in respect of the matters to be decided by the Adjudicator.

PART 7: GENERAL PROVISIONS

37 GST

- (a) Unless otherwise stated in this Agreement, all amounts payable by one party to another party are exclusive of GST.
- (b) If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (c) A party that makes a taxable supply under this Agreement must provide a valid tax invoice to the recipient of the supply.
- (d) A party's right to payment under clause 37(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) If the consideration for a supply under this Agreement is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under this Agreement is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 37 as if it were an actual payment made pursuant to this Agreement.
- (g) Unless the context otherwise requires, expressions used in this clause 37 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

38 Notices

38.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Agreement must be:
 - (i) in legible writing in the English language;

- (ii) subject to clauses 38.1(b) and 38.1(c), signed by or on behalf of the sender or by a lawyer for the sender;
 - (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
 - (iv) left or sent in accordance with clause 38.2.
- (b) A printed or copy signature is sufficient for the purposes of sending any Notice by facsimile.
 - (c) A Notice sent by email is taken to have been signed by the sender.
 - (d) A Notice must not be given orally.

38.2 Method and address for delivery

- (a) Subject to clause 38.2(b), a Notice must be:
 - (i) left at the intended recipient's address set out in the Details;
 - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details;
 - (iii) sent by facsimile to the intended recipient's facsimile number (if any) set out in the Details; or
 - (iv) sent by email to the intended recipient's email address (if any) set out in the Details.
- (b) If the intended recipient of a Notice has notified the sender of another address, facsimile number or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address, facsimile number or email address (as applicable) last notified by that intended recipient.

38.3 Time of receipt

- (a) Subject to clause 38.3(b), a Notice is taken to have been received by the intended recipient:
 - (i) if left at the intended recipient's address, at the time of delivery;
 - (ii) if sent by prepaid ordinary mail, on the third Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting;
 - (iii) if sent by facsimile, at the time shown in the transmission report as the time when the whole Notice was sent; and
 - (iv) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00 p.m. on a Business Day, the Notice is taken to be received at 9.00 a.m. on the next Business Day.

- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 38.3(a) and 38.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

38.4 Other modes or places of service

Nothing in this Agreement limits or excludes any other mode or place of service required by an applicable Law.

39 Miscellaneous

39.1 Governing law

This Agreement is governed by the Laws applying in Tasmania.

39.2 Dispute jurisdiction

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this Agreement.

39.3 Entire agreements clause

This Agreement forms the entire agreement of the parties in respect of its subject matter. The only enforceable obligations of the parties in relation to the subject matter of this Agreement are those that arise out of the provisions contained in this Agreement. All prior agreements in relation to the subject matter of this Agreement are merged in and superseded by this Agreement unless expressly incorporated in this Agreement as an annexure, an appendix, an attachment or by reference.

39.4 Liability

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Agreement, binds them jointly and each of them severally.

39.5 Benefit

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

39.6 Compliance with obligations

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under this Agreement:
- (i) comply with the provisions of this Agreement related to that performance; and
 - (ii) do not conduct themselves in a way that would result in the party being in breach of this Agreement or that, if the conduct was undertaken by the party, would result in the party being in breach of this Agreement.
- (b) If a party is prohibited from doing anything under this Agreement, that party must not knowingly assist, authorise or allow any other person to do that thing.

39.7 Severance

If a provision of this Agreement is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Agreement and the remaining provisions of this Agreement:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Agreement.

39.8 Counterparts

- (a) This Agreement may be entered into in any number of counterparts.
- (b) A party may execute this Agreement by signing any counterpart.
- (c) All counterparts, taken together, constitute one agreement.
- (d) If this Agreement is executed as a deed, it does not take effect against a party until it has been signed by all parties and delivered, unless it is a deed poll or is intended to take effect immediately when delivered by one or more parties.

39.9 Further assurance

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Agreement.

39.10 Business Days

If the day on or by which an act, matter or thing is to be done under this Agreement is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

39.11 No partnership or agency

Unless stated to the contrary in this Agreement:

- (a) nothing contained or implied in this Agreement will:
 - (i) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose;
 - (ii) create, or be taken to create, a partnership or joint venture; or
 - (iii) create, or be taken to create, an agency or trust; and
- (b) a party must not represent or hold itself out to be a partner, joint venturer, agent or representative of another party.

39.12 Legal costs

Each party must bear their own costs in preparing and negotiating this Agreement.

39.13 Amendment

This Agreement may only be amended or supplemented in writing signed by the parties.

39.14 Waiver

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.

- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

39.15 Successors and assigns

This Agreement is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

39.16 Rights cumulative

Each Right provided for in this Agreement:

- (a) operates independently of any other Right provided for in this Agreement; and
- (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document.

39.17 Set-off

A party may set-off against any moneys payable by the other party to the first party under this Agreement any debt or other moneys from time to time due and owing by the other party to the first party. This right of set-off does not limit or affect any other right of set-off available to the first party.

39.18 No assignment

A party must not assign any of its Rights and obligations under this Agreement except with the prior written consent of each other party.

39.19 Disclosure

- (a) Despite any confidentiality or intellectual property right subsisting in this Agreement, a party may publish all or any part of this Agreement without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

39.20 Determination

Where a party is required or entitled to form or hold an opinion or view under or in relation to this Agreement, that opinion or view may be formed or held by an Authorised Officer for that party. This clause does not limit any other way in which a party may otherwise form or hold an opinion or view under or in relation to this Agreement.

39.21 Consent and approvals

- (a) This clause applies to any consent or approval which a party must obtain from another party in accordance with this Agreement. For the avoidance of doubt, this clause does not apply to any consent or approval to be given under any legislation.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of this Agreement is not effective unless given in writing.

- (d) Except as otherwise stated, a party whose consent or approval is required must not unreasonably withhold or delay that consent or approval.
- (e) A consent or approval may be given subject to reasonable conditions.
- (f) A party receiving a consent or approval must comply with any conditions subject to which the consent or approval is given. To the extent that the party receiving the consent or approval fails to comply with the condition, that failure is taken to be a breach of this Agreement.

39.22 Doctrine of merger

The doctrine or principle of merger does not apply to this Agreement or to anything done under or in connection with this Agreement. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to this Agreement.

39.23 Civil Liability Act 2002 (Tas)

The parties agree that:

- (a) Part 9A of the *Civil Liability Act 2002* (Tas) does not apply; and
- (b) the Rights, obligations and liabilities (whether such Rights, obligations or liabilities are sought to be enforced as a claim in contract, in tort or otherwise) of the parties in connection with this Agreement are those that would exist if Part 9A of the *Civil Liability Act 2002* (Tas) did not apply.

39.24 Minister or State of Tasmania expressed to be party

- (a) If a Minister of the Crown (acting in that capacity) is expressed to be a party to this Agreement, then unless an applicable Law provides otherwise:
 - (i) the Minister enters into this Agreement on behalf of the Crown;
 - (ii) the Rights, obligations and liabilities expressed to be those of the Minister are Rights, obligations and liabilities of the Crown; and
 - (iii) each reference in this Agreement to the Minister will be taken to include a reference to the Crown.
- (b) For the avoidance of doubt, if the State of Tasmania is expressed to be a party to this Agreement, the Rights, obligations and liabilities of the State of Tasmania are Rights, obligations and liabilities of the Crown.

39.25 No interference with executive duties or powers

Nothing in this Agreement is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Agreement that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

39.26 Surviving provisions and termination

- (a) The termination of this Agreement does not affect or limit the operation or effect of clauses or parts of this Agreement:
 - (i) that are expressed to survive the termination of this Agreement;
 - (ii) that, at Law, survive the termination of this Agreement; or
 - (iii) that are necessary to survive the termination of this Agreement;

- (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of this Agreement;
 - (B) to enable a party to make, enforce or defend any claims related to this Agreement; or
 - (C) to give full force and effect to the operation of clause 39.26(b) or clause 39.26(c).
- (b) The termination of this Agreement does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, this Agreement before the date on which this Agreement is terminated.
- (c) Nothing in this clause 39.26 affects or limits the operation of another provision of this Agreement which gives a party Rights, or imposes obligations on a party, on or after the termination of this Agreement.

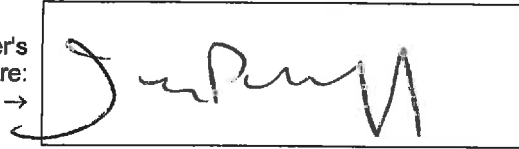
Signing

Executed as a deed

Execution by Minister

Executed as a deed by **The Honourable Jeremy Page Rockliff MP** (being and as the Minister for Education and Training in the presence of the witness named below:

Minister's
signature:



Witness'
signature:



*Witness
print
name and
position:

LEANNE MCLEAN
CHIEF OF STAFF,

*Use BLOCK LETTERS

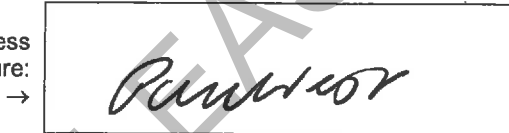
*Witness
print address:

15 MURRAY ST HOBART

Signing by Council

The common seal of **Devonport City Council** was hereunto affixed in accordance with a resolution of the Council in the presence of:

Witness
signature:



*Print
name and
office held:

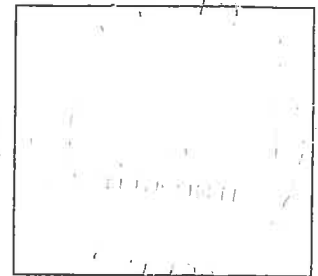

PAUL WEST
GENERAL MANAGER

*Print
address:

Devonport City Council
17 Fenton Way
DEVONPORT 7310

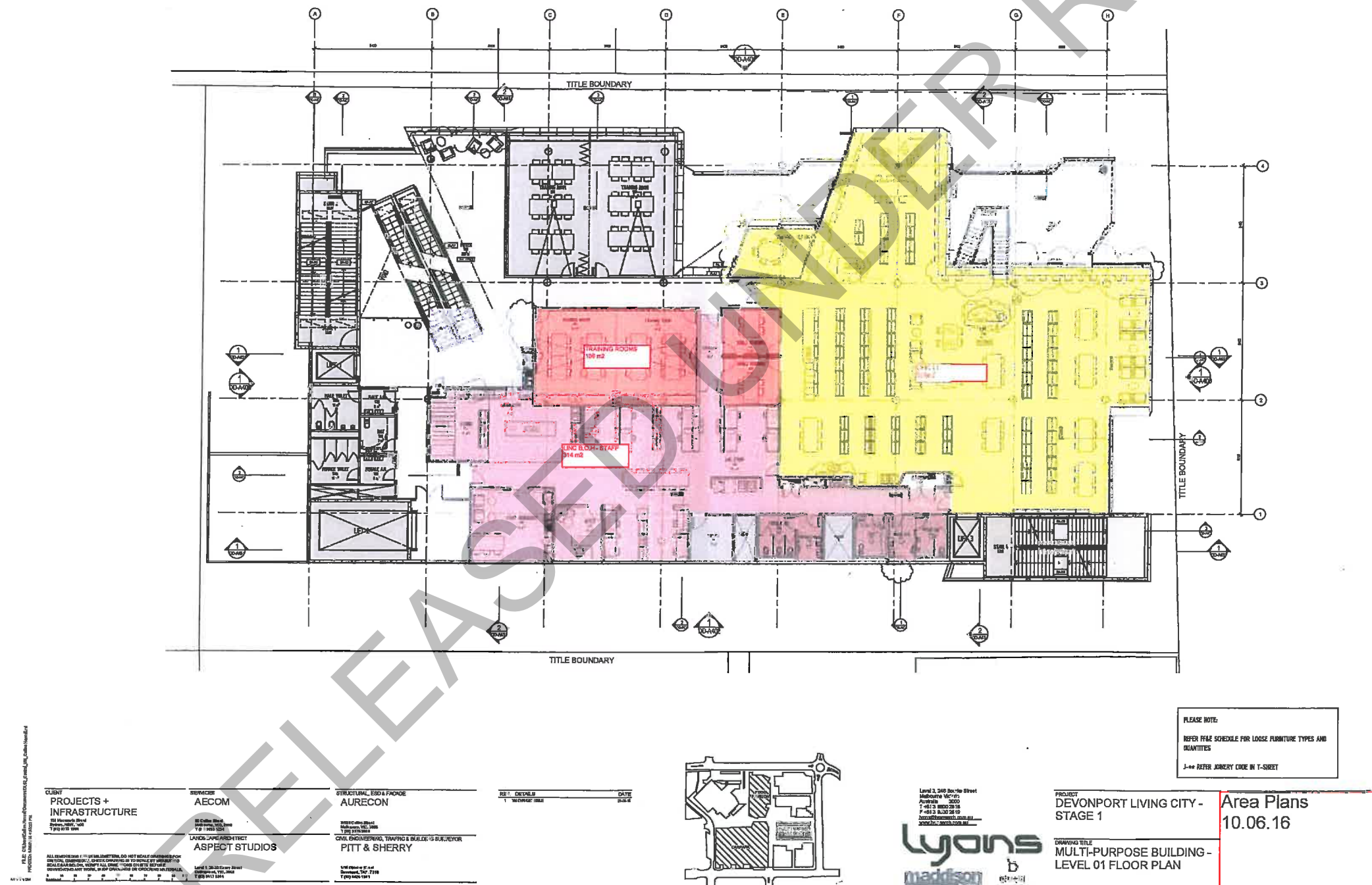
*Use BLOCK LETTERS

Seal:
→



 Ald Steve Martin
MAYOR

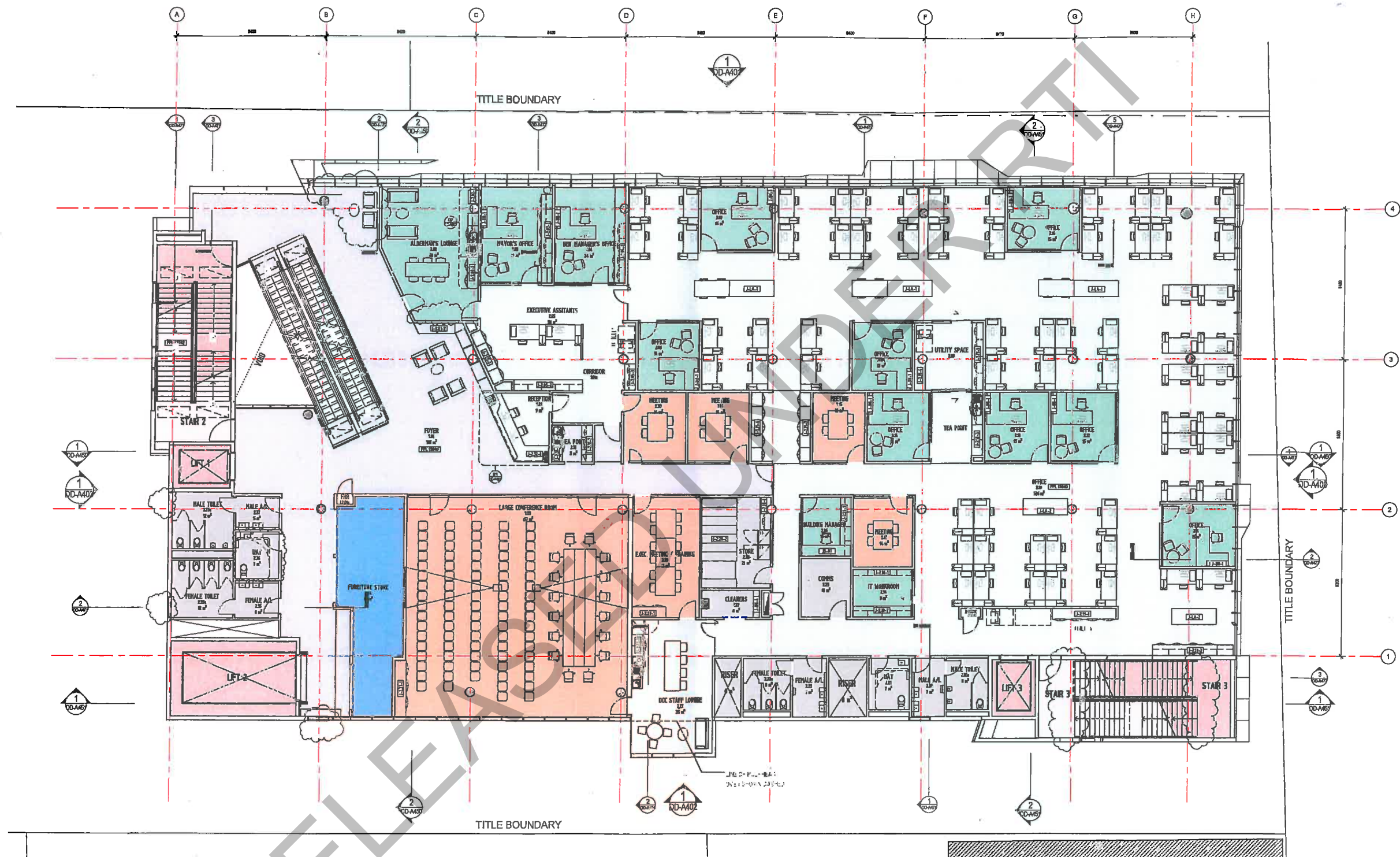
Attachment 1: Stage 1 Plans

RELEASED UNDER RTI





JOB No.	DRAWN	CHECKED	DATE
DL02	CH	NB	
DRAWING No.			REVISION
CD-A300			VM3



PLEASE NOTE:
REFER FF&E SCHEDULE FOR LOOSE FURNITURE TYPES AND QUANTITIES
J-** REFER JOINERY CODE IN T-SHEET

CLIENT
PROJECTS + INFRASTRUCTURE
151 Wattle Street
Sydney, NSW, 2000
T (02) 9775 1433

SERVICES
AECOM
80 Collins Street
Melbourne, VIC, 3000
T (03) 9875 1234

LANDSCAPE ARCHITECT
ASPECT STUDIOS

Level 1, 30-32 Bays Street
Melbourne, VIC, 3000
T (03) 9417 8844

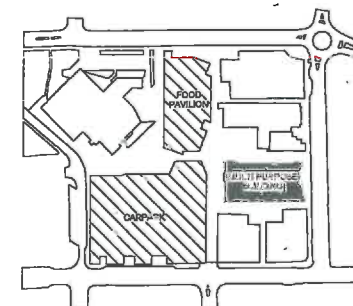
STRUCTURAL, ESD & FACADE
AURECON

8880 Collins Street
Melbourne, VIC, 3000
T (03) 9875 3000

CIVIL ENGINEERING, TRAFFIC & BUILDING SURVEYOR
PITT & SHERRY

1/25 Collins Street
Melbourne, VIC, 3000
T (03) 9424 1041

REV. DETAILS
1. VIM CHANGES
DATE
25-05-16



Level 3, 216 Bourke Street
Melbourne Victoria
Australia 3000
T +61 3 9500 2818
F +61 3 9500 2819
lyons@maddison.com.au
www.lyonsmaddison.com.au

Lyons
maddison
birrell
an i design + architecture

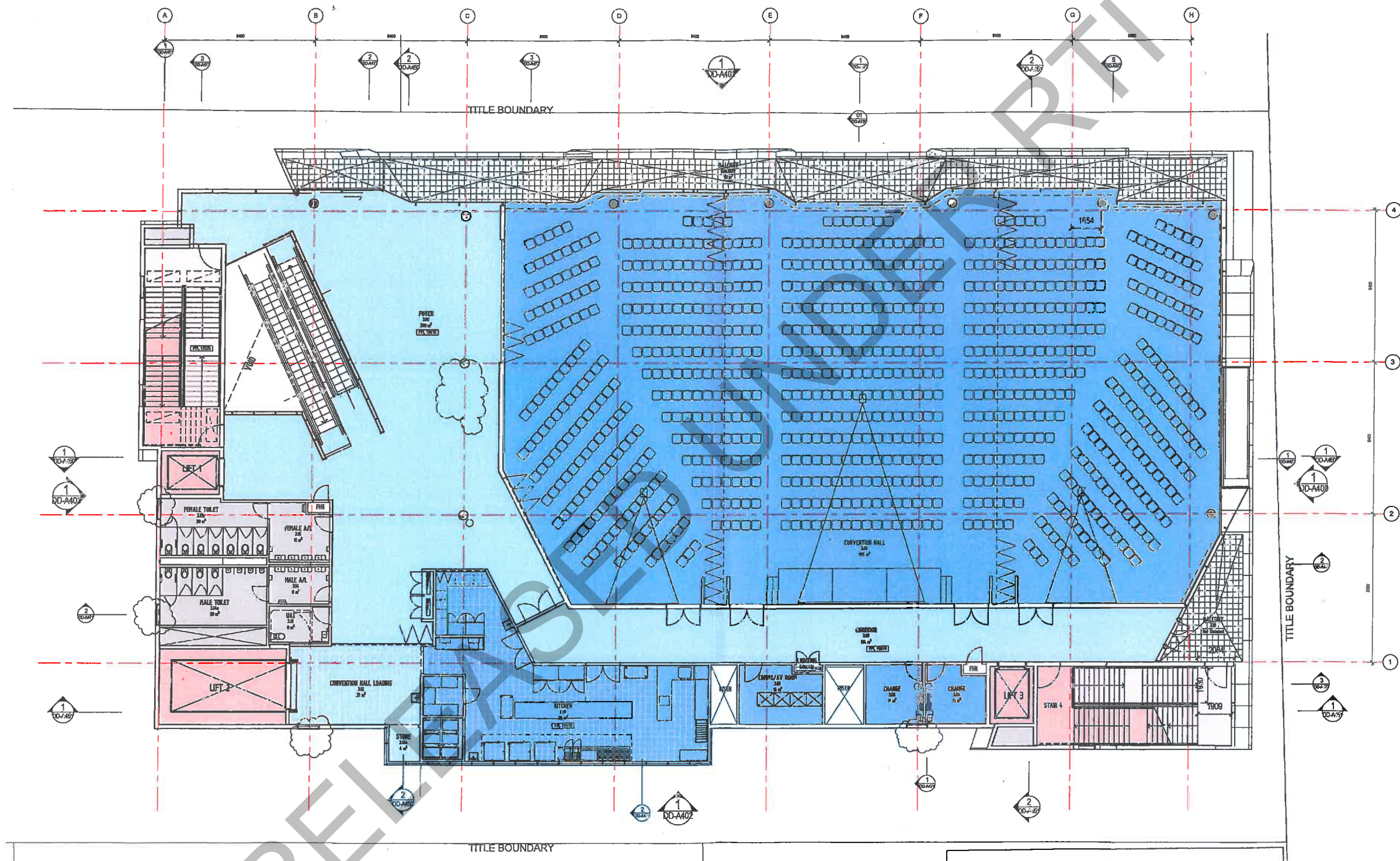
PROJECT
DEVONPORT LIVING CITY - STAGE 1

DRAWING TITLE
MULTI-PURPOSE BUILDING - LEVEL 02 FLOOR PLAN

DESIGN DEVELOPMENT
FOR TENDER

JOB No. DRAWN CHECKED
DL02 SG NB
DATE
20/05/16
REVISION
DD-A302 VM1

NORTH
SCALE
1:100 @B1



PLEASE NOTE:
REFER FF&E SCHEDULE FOR LOOSE FURNITURE TYPES AND QUANTITIES
J-** REFER JOINERY CODE IN T-SHEET

CLIENT
PROJECTS + INFRASTRUCTURE
151 Waverley Street
Melbourne, VIC 3000
T (03) 9775 1900

SERVICES
AECOM

80 Collins Street
Melbourne, VIC 3000
T (03) 5853 1214

LANDSCAPE ARCHITECT
ASPECT STUDIOS

Level 1, 30-32 Esplanade Street
Camberwell, VIC 3105
T (03) 9171 8844

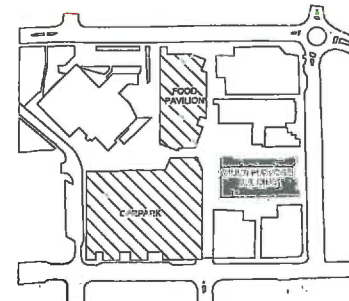
STRUCTURAL, ESD & FACADE
AURECON

8880 Collins Street
Melbourne, VIC 3000
T (03) 9915 3000

CIVIL ENGINEERING, TRAFFIC & BUILDING SURVEYOR
PITT & SHERRY

1200 Collins Street
Melbourne, VIC 3000
T (03) 9171 8844

REV. DETAILS
1. VM CHANGES ISSUE
DATE
20/05/16



Level 3, 2/5 Bourke Street
Melbourne Victoria
Australia 3000
T +61 3 9600 2818
F +61 3 9600 2819
lyons@lyonsarch.com.au
www.lyonsarch.com.au

Lyons
maddison
birrelli

PROJECT
DEVONPORT LIVING CITY - STAGE 1

DRAWING TITLE
MULTI-PURPOSE BUILDING - LEVEL 03 FLOOR PLAN

DESIGN DEVELOPMENT
FOR TENDER

JOB No. DRAWN CHECKED
DL02 CH NB
DATE
20/05/16
DRAWING No.
DD-A303
REVISION
VM1

NORTH
SCALE
1:100 @B1

Attachment 2: Milestone Events and Milestone Dates

Milestone Events and Milestone Dates

Milestone Event	Milestone Date
Practical Completion of that part of the Stage 1 Works comprising the Food Pavilion	30 November 2017
Practical Completion of that part of the Stage 1 Works comprising the Car Park	30 November 2017
Practical Completion of that part of the Stage 1 Works comprising the Multi-Purpose Building	27 April 2018
The registration of the Strata Plan	Two months from the Date of Practical Completion for that part of the Stage 1 Works comprising the Multi-Purpose Building
Sunset Date	18 months from the Date for Practical Completion of that part of the Stage 1 Works comprising the Multi-Purpose Building

Attachment 3: New Crown Premises Fit Out

RELEASED UNDER RTI

Attachment 4: Planning Permit

RELEASED UNDER RTI



Devonport City Council Planning Permit

Permit Number: PA2015.0142 (31692) ***Amended 4 July 2016**

Development Address: 40-48 Best Street, 137-143, 145, 151 Rooke Street and 9, 13, 15-17 Oldaker Street Devonport

Applicant Details: Devonport City Council
Merseybank Investments Pty Ltd
PO Box 604
Devonport 7310

This Permit allows for: Permitted Matters - Food Services, Educational and Occasional Care (Cooking School)
Discretionary Matters - Subdivision and Consolidation (eight titles into three), Demolition of State Listed Heritage Item (Former Police House), Light Beacon (assessment against performance criteria under E2.6.2 and 22.4.2 of Airport Impact Management Code and Zone Standard (height))

The following conditions apply to this permit:

1. Unless requiring alteration by subsequent conditions of this permit the use and development is to proceed generally in accordance with the:
 - (a) *submitted plans referenced as Devonport LIVING CITY – Stage 1, Job No 20150008 dated 25/05/16 Revision VM1 by Lyons, Maddison and Birrelli, copies of which are attached and endorsed as documents forming part of this Planning Permit;
 - (b) the recommendations of the Preliminary Environmental Site Assessment by Environmental Service and Design, Project No. 5247;
 - (c) the conclusions of the Pitt & Sherry Traffic Impact Assessment for Stage 1, as revised on 03/11/15; and
 - (d) the terms and conditions of the Tasmanian Heritage Council (attached).
2. The developer is to take all reasonable steps during demolition and construction to minimise off site environmental effects occurring that might result in a nuisance. This includes air, noise and water pollution and doesn't allow for burning of any waste materials.
3. The developer is to decommission any existing underground tanks located during construction in accordance with the Environmental Management & Pollution Control (Underground Petroleum Storage Systems) Regulations 2010. Any further tanks located will require soil sampling is to be undertaken to ensure contamination is minimised.

Signed

Dated

4/07/2016

WHAT HAS BEEN DECIDED?

The Planning Authority has issued a planning permit. This notice sets out on the reverse side what the permit allows and what conditions must be met. You may also need a Building Permit - please check with the Building Surveyor.

WHEN DOES A PERMIT BEGIN?

A permit takes effect on the last date provided by the following:

- a. where there is no right of appeal - on the day on which it is granted; or
- b. where there is a right of appeal - fourteen days after the this notice is served; or
- c. where an appeal has been lodged - when the appeal is determined or abandoned; or
- d. when any other approvals under any Act have been granted.

If you are unsure whether a right of appeal exists please check with a Planning Officer.

WHEN DOES A PERMIT EXPIRE?

A permit lapses two years from the date on which it was granted if the use or development has not substantially commenced.

WHAT ABOUT APPEALS?

- The applicant may appeal against any condition in the permit within 14 days after the day on which this notice was served on the applicant.
- Any person who has made a representation concerning the application may appeal against the decision to grant the permit within 14 days after the day on which notice of this permit was served on that person.
- An appeal must be lodged with the

Resource Management & Planning Appeal Tribunal

Address: G.P.O. Box 2036, HOBART TAS 7001 or
144-148 Macquarie Street, Hobart

Web: www.rmpat.tas.gov.au

Email: rmpat@justice.tas.gov.au

Telephone: 03 6165 6794

- Appeal forms can be obtained at the planning counter or directly from the Tribunal.
- A fee is payable when making an appeal. Please check with a Planning Officer or the Tribunal for details.

4. The developer is to comply with the conditions contained in the Submission to Planning Authority Notice which TasWater has required to be included in the planning permit, pursuant to section 56P(1) of the Water and Sewerage Industry Act 2008.
5. The developer is to submit the required Form 42 from the nominated Building Surveyor and other associated documents with the Building and Plumbing Permit Application.
6. The developer is to submit fully detailed civil construction drawings to Council's City Infrastructure and Works Department for approval prior to or at the time of the building and plumbing permit application. This includes:
 - (a) Details of any modifications to the vehicular access points along the site frontages where required; and
 - (b) Details and any modifications to the hydraulic services including the sizing and location of stormwater connections to Council's infrastructure.

Approved by Council at its meeting held on 21 December 2015 by Resolution No. 252/15.

*Amendment approved 4 July 2016 under delegated authority

Signed *Tom Leena*

Dated *4/07/2016*

WHAT HAS BEEN DECIDED?

The Planning Authority has issued a planning permit. This notice sets out on the reverse side what the permit allows and what conditions must be met. You may also need a Building Permit - please check with the Building Surveyor.

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Address: G.P.O. Box 2036, HOBART TAS 7001 or
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Web: www.rmpat.tas.gov.au

Email: rmpat@justice.tas.gov.au

Telephone: 03 61 65 6794

- Appeal forms can be obtained at the planning counter or directly from the Tribunal.
- A fee is payable when making an appeal. Please check with a Planning Officer or the Tribunal for details.



Heritage Council

Tasmanian Heritage Council
 GPO Box 618 Hobart Tasmania 7000
 103 Macquarie St, Hobart Tasmania 7000
 Tel: 1300 850 332
 enquiries@heritage.tas.gov.au
 www.heritage.tas.gov.au

PLANNING REF: PA2015.0142
 THC WORKS REF: #4908
 REGISTERED PLACE NO: #8218 & 8217
 FILE NO: 10-66-77THC & 09-98-84THC
 APPLICANT: Devonport City Council & Merseybank Investments Pty Ltd
 DATE: 16 December 2015

NOTICE OF HERITAGE DECISION

(*Historic Cultural Heritage Act 1995*)

The Places: Former Courthouse, 145 Rooke Street, Devonport (THR #8218).
 Town Hall, 151 Rooke Street, Devonport (THR #8217).
 Proposed Works: Living City Project (Stage 1), including boundary adjustment /
 subdivision to the rear of the heritage listed titles, demolition of a brick
 building (1902 Police Quarters), new development and landscaping

Under section 39(6)(b) of the *Historic Cultural Heritage Act 1995* (the Act), the Heritage Council gives notice that it consents to the discretionary permit being granted in accordance with the documentation submitted with Development Application PA2015.0142, advertised on 21 November 2015 subject to the following conditions:

- I. (i) An extant record of the 1902 Police Quarters must be completed in accordance with the Tasmanian Heritage Council's Practice Note No 3 (version 2, November 2014) "Procedure for Recording a Heritage Place" to the satisfaction of the Works Manager, prior to the commencement of this structure's demolition.
- (ii) This extant record must include measured drawings that clearly record the construction and details of the structure and its fitout; in plan, elevation and section drawn to scale 1:20 for interiors and 1:50 for plan and external elevations. Copies of sketch drawings bearing the dimensions taken on site must be provided with the final drafted version of the documentation.
- (iii) This extant record must include photographic prints of high resolution that illustrate the form and detail of the structure both externally and internally, and these prints referenced to a plan of the structure in a manner that clearly shows the camera location/orientation for each image.

Reason for condition

To provide a record of these heritage buildings prior to major works being undertaken, in accordance with the Tasmanian Heritage Council's Practice Note 3, *PROCEDURE FOR RECORDING A HERITAGE PLACE*. Reference may also be made to the NSW Heritage Office publication, *HOW TO PREPARE ARCHIVAL RECORDS OF HERITAGE ITEMS* (Heritage Information Series), 3rd ed., 1998.

2. (i) **An interpretation plan be developed for the site of the 1902 Police Quarters which as a minimum incorporates remains of the footings of this building within the landscape design of the new Market Square and presents these remains in a manner that is informative of the historic evolution and significance of that part of the city, having regard for the context of the adjacent Courthouse and the development of West Devonport.**
- (ii) **A draft of the interpretation plan should be prepared and submitted to Heritage Tasmania for comment prior to commencement of the demolition of the 1902 Police Quarters.**
- (iii) **Demolition of the 1902 Police Quarters is to be undertaken in a manner that enables the implementation of the interpretation plan.**

Reason for condition

To ensure that historic development and occupation of the site is understood and interpreted in the new work.

3. (i) **A statement of archaeological potential, and an archaeological method statement that are consistent with the approach outlined in the Tasmanian Heritage Council's Practice Note No 2 (version 4, November 2014) "Managing Historical Archaeological Significance in the Works Application Process" must be prepared. These documents must be submitted to and signed off by Heritage Tasmania's Works Manager prior to the commencement of any works on site; and**
- (ii) **the archaeological processes recommended in the above documents must be implemented.**

Reason for condition

To ensure that the archaeological values of the site are managed in accordance with recommendations of the Historic Heritage Assessment (Jo Lyngcoln – Heritage Management, August 2015), and with the Tasmanian Heritage Council's current Practice Note No 2.

Advice

It is recommended that the 1902 Police Quarters be dismantled in a manner that enables the salvage and recovery of the heritage fabric. Architectural fittings, joinery and other fabric should be recovered for possible use in the interpretation and for re-use in future heritage projects.

The applicant should note that all of the areas affected by the subdivision will remain entered in the Tasmanian Heritage Register as part of the original entry for the site, and that heritage works to the new lots shall require heritage approval pursuant to Part 6 of the *Historic Cultural Heritage Act 1995*. The applicant/owner may request a review, and amendment to the place's entry in the THR once the new property title/s are sealed.

Please ensure the details of this notice, including conditions, are included in any permit issued, and forward a copy of the permit or decision of refusal to the Heritage Council for our records.

Please contact on 1300 850 332 if you require clarification of any matters contained in this notice.

Brett Torossi
Chair
Tasmanian Heritage Council

16 December 2015

RELEASED UNDER RTI

Submission to Planning Authority Notice

Council Planning Permit No.	PA2015.0142	Council notice date	16/11/2015
TasWater details			
TasWater Reference No.	TWDA 2015/01817-DCC	Date of response	25/11/2015
TasWater Contact	Phil Papps	Phone No.	(03) 6237 8246
Response issued to			
Council name	DEVONPORT COUNCIL		
Contact details	council@devonport.tas.gov.au		
Development details			
Address	137-143 ROOKE ST, DEVONPORT	Property ID (PID)	6313120
Description of development	Food Pavilion, Market Square, Demolition of existing buildings and subdivision.		
Schedule of drawings/documents			
Prepared by	Drawing/document No.	Revision No.	Date of Issue
Lyons/Maddison/Birelli Architects	Site Plan / DD-A101	T1	23/10/2015
Lyons/Maddison/Birelli Architects	Demolition Plan / DD-A102	T1	23/10/2015
Aecom	Hydraulic Services Site Plan / HY002	P4	16/10/2015
Aecom	Hydraulic Services Demolition Plan / HY010	P2	16/10/2015
Conditions			
<p>Pursuant to the <i>Water and Sewerage Industry Act 2008 (TAS)</i> Section 56P(1) TasWater imposes the following conditions on the permit for this application:</p> <p>CONNECTIONS, METERING & BACKFLOW</p> <ol style="list-style-type: none"> 1. Prior to demolition of the existing developments, water and sewer connections must be disconnected and capped to prevent contaminants entering TasWater infrastructure. 2. A suitably sized metered water property connection must be provided to each new lot to service the domestic and fire demands generated by the proposed development in accordance with TasWater standards. 3. A suitably sized sewerage property connection must be provided to each new lot to service the volume of waste water generated by the proposed development in accordance with TasWater standards. 4. Any removal/supply and installation of water meters and/or the removal of redundant and/or installation of new and modified property service connections must be carried out by TasWater at the developer's cost. <p>ASSET CREATION & INFRASTRUCTURE WORKS</p> <ol style="list-style-type: none"> 5. Where applicable, TasWater's existing water and/or sewerage infrastructure must be realigned subject to Engineering Design Approval (EDA) to ensure proposed new structures comply with TasWater's minimum clearance requirements as outlined in the conditions under the 56W Consent heading of this permit. 			



6. Plans submitted with the application for Engineering Design Approval must, to the satisfaction of TasWater show, all existing, redundant and/or proposed property services and mains.
7. Prior to applying for a Permit to Construct new infrastructure the developer must obtain from TasWater formal Engineering Design Approval. The application for Engineering Design Approval must include engineering design plans prepared by a registered professional engineer showing the hydraulic servicing requirements for water and sewerage to TasWater's satisfaction.
8. Prior to works commencing, a Permit to Construct must be applied for and issued by TasWater. All infrastructure works must be inspected by TasWater and be to TasWater's satisfaction.
9. In addition to any other conditions in this permit, all works must be constructed under the supervision of a qualified engineer in accordance with TasWater's requirements.
10. Prior to Certificate of Compliance all additions, extensions, alterations or upgrades to TasWater's water and sewerage infrastructure required to service the development, generally as shown on the concept hydraulic services site plan HY002 referenced in the above schedule of drawings/documents, are to be at the expense of the developer and performed a contractor approved by TasWater, to the satisfaction of TasWater.
11. After testing/disinfection, to TasWater's requirements, of newly created works, the developer must apply to TasWater for connection of these works to existing TasWater infrastructure, at the developer's cost.
12. At practical completion of the infrastructure water and/or sewerage works and prior to applying to TasWater for a Certificate of Compliance (Building and Plumbing), the developer must obtain a Certificate of Practical Completion from TasWater for the works that will be transferred to TasWater. After the Certificate of Practical Completion has been issued, a 12 month defects liability period applies to this infrastructure. During this period all defects must be rectified at the developer's cost and to the satisfaction of TasWater. A further 12 month maintenance period may be applied to defects after rectification. TasWater may, at its discretion, undertake rectification of any defects at the developer's cost. The maintenance period will be deemed to be complete on issue of a "Certificate of Final Acceptance" from TasWater. To obtain a Certificate of Practical Completion:
 - a) Written confirmation from a qualified engineer certifying that the works have been constructed in accordance with the TasWater approved plans and specifications and that the appropriate level of workmanship has been achieved.
 - b) A request for a joint on-site inspection with TasWater's authorised representative must be made.
 - c) Security for the twelve (12) month defects liability period to the value of 10% of the works must be lodged with TasWater. This security must be in the form of a bank guarantee.
 - d) As Constructed Drawings must be prepared by a qualified Surveyor to TasWater's satisfaction and forwarded to TasWater.
13. Upon completion, to TasWater's satisfaction, of the defects liability period the newly constructed infrastructure will be transferred to TasWater and the developer must request TasWater to issue a "Certificate of Final Acceptance".
14. The developer must take all precautions to protect existing TasWater infrastructure. Any damage caused to existing TasWater infrastructure during the construction period must be promptly reported to TasWater and repaired by TasWater at the developer's cost.
15. Ground levels over the TasWater assets /easements must not be altered without the written



approval of TasWater.

16. A construction management plan must be submitted with the application for TasWater engineering design approval. The construction management plan must detail how the new TasWater water infrastructure will be constructed while maintaining current levels of services provided by TasWater to the community. The construction plan must also include a risk assessment and contingency plans covering major risks to TasWater during any relocation process. The construction plan must be to the satisfaction of TasWater prior to Engineering Design Approval being issued.

FINAL PLANS, EASEMENTS & ENDORSEMENTS

17. Prior to the Sealing of the Final Plan of Survey, the developer must obtain a Consent to Register a Legal Document from TasWater and the certificate must be submitted to the Council as evidence of compliance with these conditions when application for sealing is made;
18. Pipeline easements must be created over existing/proposed sewerage/water pipelines on TasWater's standard pipeline easement conditions. Pipeline easement width, location of easements relative to pipes, and terms and conditions must be to TasWater's satisfaction.

56W CONSENT

19. Prior to the issue of the Certificate for Certifiable Work (Building) and/or (Plumbing) by TasWater the applicant or landowner as the case may be must make application to TasWater pursuant to section 56W of the Water and Sewerage Industry Act 2008 for its consent in respect of that part of the development which is built within two metres of TasWater infrastructure.
20. Footings of proposed buildings located within 2.0m from TasWater pipes must be designed by a suitably qualified person to adequately protect the integrity of TasWater's infrastructure, and to TasWater's satisfaction, be in accordance with AS3500 Part 2.2 Section 3.8 to ensure that no loads are transferred to TasWater's pipes. Plans submitted with the application for Certificate for Certifiable Work (Building) and/or (Plumbing) must include a cross sectional view through the footings which clearly shows;
 - a. Existing pipe depths and proposed finished surface levels over the pipes;
 - b. Structures must be outside of TasWater's easements and/or no closer than 2.0m from water mains;
 - c. Structures must be outside of TasWater's easements and/or no closer than 1.0m from sewerage mains and;
 - d. The line of Influence from the base of the footing must pass below the invert of the pipe and be clear of the pipe trench.

BOUNDARY TRAPS

21. Boundary traps where required must be contained within the property boundaries and the property owner remains responsible for the ownership, operation and maintenance of the boundary trap.

TRADE WASTE

22. Prior to the commencement of operation the developer/property owner must obtain Consent to discharge Trade Waste from TasWater.
23. The developer must install appropriately sized and suitable pre-treatment devices prior to gaining Consent to discharge.
24. The Developer/property owner must comply with all TasWater conditions prescribed in the Trade Waste Consent.



DEVELOPMENT ASSESSMENT FEES

25. The applicant or landowner as the case may be, must pay a development assessment and Consent to Register a Legal Document fee to TasWater for this proposal of:
- a. \$1,061.00 for development assessment; and
 - b. \$216.00 for Consent to Register a Legal Document as approved by the Economic Regulator and the fees will be indexed as approved by the Economic Regulator from the date of:
 - i. The Submission to Planning Authority Notice for the development assessment fee; and
 - ii. The Consent to Register a Legal Document for the Legal Document until the date they are paid to TasWater; and payment is required within 30 days from the date of the invoice.

Advice

Works External

TasWater's Asset Engineers have indicated that existing water and sewerage infrastructure has the capacity to service the Stage 1 proposal however future stages may require additional works external (TasWater infrastructure upgrades) subject to future assessment.

Trade Waste

The application for a Certificate for Certifiable Work (Building) and/or (Plumbing) must include plans showing;

- Location of all pre-treatment devices i.e. grease arrestors/triple interceptors, dry basket arrestors,
- Schematic drawings and specification (including the size and type) of all proposed pre-treatment device together with hydraulic drainage designs and,
- Location of accessible sampling points in accordance with the TasWater Trade Waste Flow Meter and Sampling Specifications for sampling discharge.

At the time of submitting the Certificate for Certifiable Work (Building and/or Plumbing) a Trade Waste Application form(s) is/are required.

If the nature of businesses changes within the development or business are sold, TasWater is to be informed to allow pre-treatment to be reassessed.

The application forms are available at <http://www.taswater.com.au/Customers/Liquid-Trade-waste/Commercial>.

General

For information on TasWater development standards, please visit <http://www.taswater.com.au/Development/Development-Standards>

For information regarding, further assessment fees and other miscellaneous fees, please visit <http://www.taswater.com.au/Development/Fees—Charges>

For application forms please visit <http://www.taswater.com.au/Development/Forms>

The developer is responsible for arranging to locate existing TasWater infrastructure and clearly showing it on any drawings. Existing TasWater infrastructure may be located by TasWater (call 136 992) on site at the developer's cost, alternatively a surveyor and/or a private contractor may be engaged at the developers cost to locate the infrastructure.



Devonport City Council Planning Permit

Permit Number: PA2015.0143 (31693) ***Amended 4 July 2016**

Development Address: 40-48 Best Street and 137-143 Rooke Street Devonport

Applicant Details: Devonport City Council
PO Box 604
Devonport 7310

This Permit allows for: Permitted Matters - Community Meeting and Entertainment (Multi-Purpose Building), Vehicle Parking (Multi Level Car Park), General Retail and Hire. Discretionary Matter - Utilities (Electrical Substation greater than 110kv)

The following conditions apply to this permit:

1. *The use and development is to proceed generally in accordance with the
 - (a) *submitted plans referenced as Devonport Living City – Stage 1, Job No DL02 dated 20/05/16 Revision VM2 by Lyons, Maddison and Birrelli, copies of which are attached and endorsed as documents forming part of this Planning Permit;
 - (b) the recommendations of the Preliminary Environmental Site Assessment by Environmental Service and Design, Project No. 5247;
 - (c) the conclusions of the Pitt & Sherry Traffic Impact Assessment for Stage 1, as revised on 03/11/15 and amended in consultation with Council's Infrastructure and Works Department.
2. The developer is to take all reasonable steps during demolition and construction to minimise off site environmental effects occurring that might result in a nuisance. This includes air, noise and water pollution and doesn't allow for burning of any waste materials.
3. The developer is to decommission any existing underground tanks located during construction in accordance with the Environmental Management & Pollution Control (Underground Petroleum Storage Systems) Regulations 2010. Any further tanks located will require soil sampling is to be undertaken to ensure contamination is minimised.

Signed

Dated

4 July 2016

WHAT HAS BEEN DECIDED?

The Planning Authority has issued a planning permit. This notice sets out on the reverse side what the permit allows and what conditions must be met. You may also need a Building Permit - please check with the Building Surveyor.

WHEN DOES A PERMIT BEGIN?

A permit takes effect on the last date provided by the following:

- a. where there is no right of appeal - on the day on which it is granted; or
- b. where there is a right of appeal - fourteen days after the this notice is served; or
- c. where an appeal has been lodged - when the appeal is determined or abandoned; or
- d. when any other approvals under any Act have been granted.

If you are unsure whether a right of appeal exists please check with a Planning Officer.

WHEN DOES A PERMIT EXPIRE?

A permit lapses two years from the date on which it was granted if the use or development has not substantially commenced.

WHAT ABOUT APPEALS?

- The applicant may appeal against any condition in the permit within 14 days after the day on which this notice was served on the applicant.
- Any person who has made a representation concerning the application may appeal against the decision to grant the permit within 14 days after the day on which notice of this permit was served on that person.
- An appeal must be lodged with the

Resource Management & Planning Appeal Tribunal

Address: G.P.O. Box 2036, HOBART TAS 7001 or
144-148 Macquarie Street, Hobart

Web: www.rmpat.tas.gov.au

Email: rmpat@justice.tas.gov.au

Telephone: 03 6165 6794

- Appeal forms can be obtained at the planning counter or directly from the Tribunal.
- A fee is payable when making an appeal. Please check with a Planning Officer or the Tribunal for details.

4. The developer is to comply with the conditions contained in the Submission to Planning Authority Notice which TasWater has required to be included in the planning permit, pursuant to section 56P(1) of the Water and Sewerage Industry Act 2008.
5. The developer is to submit fully detailed civil construction drawings to Council's City Infrastructure and Works Department for approval prior to or at the time of the building and plumbing permit application. This includes:
 - (a) Details of any modifications to the vehicular access points along the site frontages where required; and
 - (b) Details and modifications to the hydraulic services including the sizing and location of stormwater connections to Council's infrastructure.

Approved by Council at its meeting held on 21 December 2015 by Resolution No. 251/15

*Amendment approved 4 July 2016 under delegated authority

Signed	<i>Shane Beane</i>
Dated	4-07-2016

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Submission to Planning Authority Notice

Council Planning Permit No.	PA2015.0143	Council notice date	16/11/2015
TasWater details			
TasWater Reference No.	TWDA 2015/01818-DCC	Date of response	25/11/2015
TasWater Contact	Phil Papps	Phone No.	(03) 6237 8246
Response issued to			
Council name	DEVONPORT COUNCIL		
Contact details	council@devonport.tas.gov.au		
Development details			
Address	137-143 ROOKE ST, DEVONPORT	Property ID (PID)	6313120
Description of development	Community building and multi level carpark (137 - 143 Rooke St and 40-48 Best St)		
Schedule of drawings/documents			
Prepared by	Drawing/document No.	Revision No.	Date of Issue
Lyons/Maddison/Birelli Architects	Site Plan / DD-A101	T1	23/10/2015
Lyons/Maddison/Birelli Architects	Demolition Plan / DD-A102	T1	23/10/2015
Aecom	Hydraulic Services Site Plan / HY002	P4	16/10/2015
Aecom	Hydraulic Services Demolition Plan / HY010	P2	16/10/2015
Conditions			
<p>Pursuant to the <i>Water and Sewerage Industry Act 2008 (TAS)</i> Section 56P(1) TasWater imposes the following conditions on the permit for this application:</p> <p>CONNECTIONS, METERING & BACKFLOW</p> <ol style="list-style-type: none"> 1. Prior to demolition of the existing developments, water and sewer connections must be disconnected and capped to prevent contaminants entering TasWater infrastructure. 2. A suitably sized metered water property connection must be provided to service the domestic and fire demands generated by the proposed development in accordance with TasWater standards. 3. A suitably sized sewerage property connection must be provided to service the volume of waste water generated by the proposed development in accordance with TasWater standards. 4. Any removal/supply and installation of water meters and/or the removal of redundant and/or installation of new and modified property service connections must be carried out by TasWater at the developer's cost. <p>ASSET CREATION & INFRASTRUCTURE WORKS</p> <ol style="list-style-type: none"> 5. Where applicable, TasWater's existing water and/or sewerage infrastructure must be realigned subject to Engineering Design Approval (EDA) to ensure proposed new structures comply with TasWater's minimum clearance requirements as outlined in the conditions under the 56W Consent heading of this permit. 6. Plans submitted with the application for Engineering Design Approval must, to the satisfaction of 			



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18. Footings of proposed buildings located within 2.0m from TasWater pipes must be designed by a suitably qualified person to adequately protect the integrity of TasWater's infrastructure, and to TasWater's satisfaction, be in accordance with AS3500 Part 2.2 Section 3.8 to ensure that no loads are transferred to TasWater's pipes. Plans submitted with the application for Certificate for Certifiable Work (Building) and/or (Plumbing) must include a cross sectional view through the footings which clearly shows;
- Existing pipe depths and proposed finished surface levels over the pipes;
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19. Boundary traps where required must be contained within the property boundaries and the property owner remains responsible for the ownership, operation and maintenance of the boundary trap.

TRADE WASTE

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22. The Developer/property owner must comply with all TasWater conditions prescribed in the Trade Waste Consent.

DEVELOPMENT ASSESSMENT FEES

23. The applicant or landowner as the case may be, must pay a development assessment and Consent to Register a Legal Document fee to TasWater for this proposal of:
- \$1,061.00 for development assessment; and
 - \$216.00 for Consent to Register a Legal Document as approved by the Economic Regulator and the fees will be indexed as approved by the Economic Regulator from the date of:
 - The Submission to Planning Authority Notice for the development assessment fee



and;

- ii. The Consent to Register a Legal Document for the Legal Document until the date they are paid to TasWater; and payment is required within 30 days from the date of the invoice.

Advice

Works External

TasWater's Asset Engineers have indicated that existing water and sewerage infrastructure has the capacity to service the Stage 1 proposal however future stages may require additional works external (TasWater infrastructure upgrades) subject to future assessment.

Trade Waste

The application for a Certificate for Certifiable Work (Building) and/or (Plumbing) must include plans showing;

- *Location of all pre-treatment devices i.e. grease arrestors/triple interceptors, dry basket arrestors,*
- *Schematic drawings and specification (including the size and type) of all proposed pre-treatment device together with hydraulic drainage designs and,*
- *Location of accessible sampling points in accordance with the TasWater Trade Waste Flow Meter and Sampling Specifications for sampling discharge.*

At the time of submitting the Certificate for Certifiable Work (Building and/or Plumbing) a Trade Waste Application form(s) is/are required.

If the nature of businesses changes within the development or business are sold, TasWater is to be informed to allow pre-treatment to be reassessed.

The application forms are available at <http://www.taswater.com.au/Customers/Liquid-Trade-waste/Commercial>.

General

For information on TasWater development standards, please visit <http://www.taswater.com.au/Development/Development-Standards>

For information regarding, further assessment fees and other miscellaneous fees, please visit <http://www.taswater.com.au/Development/Fees---Charges>

For application forms please visit <http://www.taswater.com.au/Development/Forms>

The developer is responsible for arranging to locate existing TasWater infrastructure and clearly showing it on any drawings. Existing TasWater infrastructure may be located by TasWater (call 136 992) on site at the developer's cost, alternatively a surveyor and/or a private contractor may be engaged at the developers cost to locate the infrastructure.

Declaration

The drawings/documents and conditions stated above constitute TasWater's Submission to Planning Authority Notice.

Authorised by



A handwritten signature in black ink, appearing to read "Jason Taylor".

Jason Taylor
Development Assessment Manager

TasWater Contact Details			
Phone	13 6992	Email	development@taswater.com.au
Mail	GPO Box 1393 Hobart TAS 7001	Web	www.taswater.com.au

RELEASED UNDER RTI

Attachment 5: Crown Car Parks Lease

RELEASED UNDER RTI

Our Ref: RJA.1602906

**COLIN
BIGGERS
& PAISLEY**
LAWYERS

Crown Car Parks Lease

Part Council Car Park, Best Street, Devonport

Devonport City Council ACN 47 611 446 016 (Landlord)

**The Crown in Right of Tasmania (represented by the Honourable Jeremy Page
Rockliff MP being and in his capacity as the Minister for Education and
Training) (Tenant)**

**COLIN BIGGERS
& PAISLEY PTY LTD**
ABN 28 166 080 682
T +61 3 8624 2000
F +61 3 8624 2031

Level 23
181 William Street
Melbourne VIC 3000
Australia

GPO Box 4542
Melbourne VIC 3001
Australia
DX 640 Melbourne

BRISBANE MELBOURNE SYDNEY

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####

Details

Date

Parties

Name	Devonport City Council		
ACN	47 611 446 016		
Description	Landlord		
Notice Details	Address	44-48 Best Street, Devonport, Tasmania 7310	
	Email	council@devonport.tas.gov.au	
	Attention	General Manager	
Name	The Crown in Right of Tasmania (represented by the Honourable Jeremy Page Rockliff MP being and in his capacity as the Minister for Education and Training)		
ABN	[##TBA]		
Description	Tenant		
Notice Details	Address	C/- Office of the Coordinator-General, Level 1 Cornwall Square, 12-16 St John Street, Launceston, Tasmania 7250	
	Email	cg@cg.tas.gov.au	
	Attention	Coordinator-General	

Items

Item 1.	Commencement Date: [##To be inserted once ascertained]
Item 2.	Expiry Date: [##To be inserted once ascertained]
Item 3.	Rent: \$1.00 (plus GST)
Item 4.	Term: 10 years
Item 5.	Further terms Eight further terms of 10 years each [##CBP note: The DA provides for an initial term of 10 years with 8 further terms of 10 years]
Item 6.	Public risk insurance: \$20 million.

Agreed terms

1. Definitions and interpretation

1.1 Definitions

In this lease, unless the context otherwise requires:

Australian Standards means any standard published by Standards Australia Limited (and known as 'Standards Australia') current as at the Commencement Date and includes any further standards introduced by Standards Australia Limited, compliance with which is mandatory in respect of the Car Parking Area.

Authorised Representative means:

- (a) for the Tenant, each of the Secretary of the Department, an Acting Secretary of that department, a Deputy Secretary of that department, and a nominee of any of them; or
- (b) for any other party, a person authorised in writing by that party.

Business Day means any day on which the banks are open for business in Devonport, but does not include a Saturday, a Sunday or a public holiday generally observed in Devonport.

Car Parking Area means that part of the Land shown as the car parking area on the Plan.

Car Parking Area Operating Expenses means:

- (a) all proper and reasonable insurance premiums and other charges (including stamp duty, excesses and consultancy fees) payable for or in relation to any insurances the Landlord is required to effect and maintain under this lease in respect of the Car Parking Area and the Car Parking Spaces;
- (b) all proper and reasonable costs and expenses incurred by the Landlord in:
 - (i) cleaning the Car Parking Area, the Car Parking Spaces and the Common Areas;
 - (ii) supplying the Services to the Car Parking Area including any carbon tax incurred and payable by the Landlord in respect of the supply of any such service;
 - (iii) maintaining and repairing the Car Parking Area, the Premises and the Services (including the periodic re-painting of painted lines and surfaces);
 - (iv) the provision of security, access control and management of emergencies in relation to the Car Parking Area; and
 - (v) providing pest control, signage and complying with the requirements of any Government Body in relation to occupational health and safety in relation to the Car Parking Area; and
 - (vi) management fees directly incurred by the Landlord in relation to the on-site management of the Car Parking Area,

but specifically does not include the Excluded Outgoings.

Car Parking Spaces means 12 Parking Bays located in the Car Parking Area in the locations as shown on the Plan.

Commencement Date means the date stated in Item 1.

Common Areas means:

- (a) those parts of the Car Parking Area (excluding the Car Parking Spaces) and the Land which are required for the use and enjoyment of the Car Parking Spaces including driveways, footways, entrances, exits, fire escapes, foyers, corridors, toilets, lifts and stairways and any other areas set aside by the Landlord for general use of the Tenant or other occupiers or users of the Car Parking Area; and
- (b) the bicycle racks, change rooms and storage areas (if any) in the Car Parking Area.

Crown means The Crown in Right of Tasmania.

Crown Agency means a statutory agency (as defined in Section 1A of the *Public Accounts Committee Act 1970* (Tas)) or a Government Business Enterprise (for the purposes of the *Government Business Enterprises Act 1995* (Tas)).

Department means the Department of [##State Growth / Education - TBA] or any other department which substantially succeeds to its functions.

entity has the meaning given to it in section 64A of the *Corporations Act 2001* (Cth).

Excluded Outgoings means:

- (a) any amount:
 - (i) that the Tenant is expressly responsible for under another provision of this lease;
 - (ii) payable for or in relation to any insurance premiums the Landlord may effect and maintain for loss of rent, business interruption or structural defects in respect of the Car Parking Area and the Common Areas;
 - (iii) of GST payable in respect of the Outgoings to the extent that the Landlord is entitled to a credit for that GST under the GST law;
 - (iv) incurred in relation to the Landlord complying with its repair and maintenance obligations under clause 7 of a capital or structural nature;
 - (v) incurred in the replacement of major component parts, including compressors, lift motors and cables, escalators and ventilation filters;
 - (vi) incurred by the Landlord in the repainting of the Car Parking Area or the Common Areas;
 - (vii) incurred in relation to repairs and maintenance to the Car Parking Area, or the Common Areas to the extent attributable to the defective design of the Car Parking Area or the Common Areas;
 - (viii) incurred by the Landlord in the rectification of any latent or patent defects in the Car Parking Area or the Common Areas during the Term; and
 - (ix) whether or not of a capital or structural nature;

- (A) incurred by the Landlord in respect of its repair and maintenance obligations under clause 7 which are recoverable under a manufacturer's or supplier's warranty or guarantee; or
 - (B) incurred in the cleaning or repair of the Car Parking Area or the Common Areas or the rectification of damage or replacement of any part of the Car Parking Area or the Common Areas required by or brought about due to the conduct of any demolition, construction or other works on the Land during the Term;
- (b) any interest, fees, charges, costs or penalties incurred as a result of late payment of Outgoings by the Landlord;
 - (c) any premium or additional premium payable by the Landlord payable as a result of construction and demolition works continuing on, in, under or adjacent to the Car Parking Area;
 - (d) any liability or expenditure:
 - (i) recoverable by the Landlord through insurance; or
 - (ii) payable by or recoverable from some other tenant or tenants of the Car Parking Area or from any other person;
 - (e) capital expenditure by the Landlord on plant, machinery, equipment or structural repairs to the Car Parking Area or the Common Areas;
 - (f) costs or expenses of a capital nature including costs in respect of which depreciation may be claimed under any Law relating to tax and costs which are not generally treated as an outgoing or an operating expense pursuant to accounting standards, policies or practices;
 - (g) expenses incurred in the repair or replacement of the Car Parking Area fabric or façade;
 - (h) any costs, fines, penalties or interest charges incurred by the Landlord due to any act, omission or negligence on the part of the Landlord or the Landlord's Associates;
 - (i) any Outgoings which relate solely to a part of the Car Parking Area which does not form part of the Car Parking Spaces or the Common Areas; and
 - (j) costs, expenses and interest in connection with money borrowed by the Landlord.

Nothing in paragraphs (a) to (j) of this definition limits the generality of any of those paragraphs.

Expiry Date means the date stated in Item 2.

Government Body includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government and a statutory authority or instrumentality.

GST means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

GST Laws means applicable Laws relating to GST.

Interest Rate means interest to be calculated at the rate being 2% above the rate chargeable at the time by the Australia and New Zealand Banking Corporation Ltd on overdraft accounts of less than \$100,000.

Land means the land comprised in folio of the Register Volume [##To be inserted once ascertained] Folio [##To be inserted once ascertained].

Landlord includes the person entitled to possession of the Premises when this lease ends.

Landlord's Associates includes:

- (a) each employee, contractor and agent of the Landlord;
- (b) each employee, sub-contractor and agent of any of the above; and
- (c) the employees and agents of any such sub-contractor,

who are involved in any activity related to this lease or the Landlord's obligations under this lease, and **Landlord's Associate** means any of them. The Tenant is not, and nor is any Tenant's Associate, a Landlord's Associate.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

Loss means any loss, cost, expense, damage, liability, damages or exposure of any type and however arising incurred by a person including:

- (a) liability to third parties;
- (b) loss or damage arising out of an injury, disease or death; and
- (c) loss or damage as a result of any destruction of or damage to real or personal property.

month means a calendar month.

Multi-Purpose Building - Crown Premises means the land comprised in folio of the Register Volume [##To be inserted once ascertained] Folio [##To be inserted once ascertained].

Normal Operating Hours means the period between the hours of 7.00 a.m. and 7.00 p.m. on a Business Day or such other hours as the parties agree in writing.

Occupancy Approval means, in relation to the Car Parking Area, any written permit, permission, certificate or consent of a Government Body necessary to enable the lawful occupation of the Car Parking Area for its intended purpose.

Outgoings means:

- (a) the Rates and Taxes; and
- (b) the Car Parking Area Operating Expenses,

but specifically does not include the Excluded Outgoings.

Outgoings Year means each of the following periods:

- (a) the period from and including the Commencement Date and ending on 30 June next occurring after the Commencement Date;
- (b) during the Term, each period of 12 months ending on 30 June; and
- (c) if the Term ends on a date which is not 30 June, the period from 1 July preceding the end of the Term and ending on the date on which the Term ends.

Parking Bay means a dedicated individually marked space for parking of a Vehicle having direct access and egress to a driveway or ramp without having to use another space and having a minimum dimension as shown in Figure 2.2 in Section 2.4.1 of Australian Standard AS 2890.1.

Parking Levy means any imposition by the State of any duty tax or levy on off-street commercial and office parking spaces (including parking spaces in parking stations).

Payment means the Rent, the Tenant's Share of Outgoings along with any other consideration and, in the case of non-monetary consideration, the market value of the consideration (taking no account in either case of any GST payable in connection with that consideration), payable or provided by the Tenant or the Landlord for any supply made under or in connection with this lease (other than an amount payable under clause 23).

Payment Date means the Commencement Date and then the first day of each subsequent month.

Plan means the plan of the Land showing, amongst other things, the location of the Car Parking Spaces and their numbers within the Car Parking Area which is contained in Attachment 1.

Rates and Taxes means all rates, taxes (including land tax calculated as if the Land was the only property owned by the Landlord in Tasmania, but excluding income tax, GST and other taxes of like nature), charges, levies, assessments and fees at any time payable to any Government Body in respect of the Car Parking Area (or any part of the Car Parking Area).

Rent means the amount set out in Item 3, as varied in accordance with the provisions of this lease.

Requirement means any requirement, notice, order or direction received from or given by any Government Body.

Service means each of the following:

- (a) the supply of lighting to the Car Parking Area and the Common Areas;
- (b) ventilation to those parts of the Car Parking Area which are serviced by mechanical ventilation plant;
- (c) a lift service to all levels of the Car Parking Area;
- (d) drainage;
- (e) the emergency power supply system, emergency warning system and evacuation system for the Car Parking Area;
- (f) fire detection and fire protection services for the Car Parking Area; and
- (g) security alarms and access controls for the Car Parking Area.

State means the State of Tasmania.

Subdivide includes:

- (a) to subdivide land within the meaning of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (Tas), but does not include the grant of any lease that is exempt from the subdivision provisions of that Act; and
- (b) to divide land (including airspace) or a building by any form of strata title.

Tenant's Associates means the Tenant's officers, employees, licensees, agents and contractors and specifically excludes the Landlord and the Landlord's Associates.

Tenant's Share of Outgoings means for an Outgoings Year the amount 'TSO' in the following formula:

$$TSO = \left(\frac{A}{B} \times C \right) \times \frac{E}{365}$$

where:

- TSO = Tenant's Share of Outgoings;
- A = the number of Car Parking Spaces;
- B = the total number of car parking spaces in the Car Parking Area;
- C = the estimated or actual Outgoings for that Outgoings Year;
- D = the number of days of the Term in that Outgoings Year.

Term means the period stated in Item 4.

Vehicle means a car, station wagon, motorbike, scooter or light commercial vehicle, SUV or 4WD (with a tare weight of less than 1 tonne).

1.2 Interpretation

In this lease, unless the context otherwise requires:

- (a) a reference to this lease or any other document referred to in this lease or another instrument includes any variation, or replacement or novation of any of them;
- (b) a reference to a statute, ordinance, code or other Law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) **person** includes a firm, a body corporate, an unincorporated association, a responsible authority or Government Body, as constituted from time to time;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes and permitted assigns;
- (f) other parts of speech and grammatical forms of a word or phrase defined in this lease have a corresponding meaning;
- (g) mentioning any thing after the words **include**, **included** or **including** does not limit the meaning of any thing mentioned before those words;

- (h) a reference to a body other than a party to this lease whether or not it is a statutory body:
 - (i) which ceases to exist; or
 - (ii) whose powers or functions are transferred to any other body,
 refers to the body which replaces it or which substantially succeeds to its powers or functions;
- (i) a reference to an officer of an organisation or other entity includes any person acting in that office
- (j) a reference to writing includes a reference to printing, typing and each other method of producing words, figures or symbols in visible form;
- (k) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
- (l) a reference to a document includes any agreement in writing or any certificate, notice, instrument or other document of any kind;
- (m) words importing any gender include all other genders, as applicable;
- (n) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them;
- (o) a covenant prohibiting a person from doing anything also prohibits that person from authorising or allowing it to be done by another person;
- (p) a reference to a section, clause, recital, schedule, annexure or appendix is to a section, clause, recital, schedule, annexure or appendix in or to this lease;
- (q) a reference to a day must be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (r) a reference to the payment of money within a specified time is a reference to the full clearance of any personal cheque into the account of the payee within that time;
- (s) words or phrases derived from a defined word have a corresponding meaning to the defined word;
- (t) references to '\$' and 'dollars' are to Australian dollars; and
- (u) a reference to the Landlord includes, where context permits, a reference to the Landlord's Associates.

1.3 No contra proferentum

In the interpretation of this lease, no rule of construction will apply to disadvantage a party because that party proposed a provision of this lease or the lease itself.

1.4 Warranty and indemnity

Where any warranty is given by the Landlord under this lease, the Landlord indemnifies the Tenant in respect of any Loss which arises out of or is in any way connected with a breach of that warranty.

1.5 Extent of indemnity

Any indemnity given by the Landlord under this lease:

- (a) is a continuing obligation, separate and independent from the other obligations of the Landlord;
- (b) survives termination of this lease; and
- (c) extends to any loss including (without limitation) loss arising from or in any way connected with an act, default or omission or other event in respect of which the indemnity is given provided that the Tenant remains obliged to discharge the common law obligation in relation to mitigation of loss and any loss resulting from a failure to discharge such obligation is not included in an such indemnity.

1.6 Headings

Headings are included for convenience only and do not affect the construction or interpretation of this lease.

1.7 Capacity of the Tenant

- (a) Unless otherwise stated in this lease, a reference to the Tenant means the Tenant as a contracting party under this lease.
- (b) The Tenant's rights under this lease are in addition to its prerogatives and rights under legislation or at common law. Nothing in this lease limits or prevents the Tenant or the Crown from exercising such prerogative or any right or otherwise requires the Tenant or the Crown to exercise, refrain from exercising or to procure the exercise or the refraining from the exercise of any such prerogative or right in a particular way or at all.

1.8 Capacity of the Landlord

The Landlord must, where the context requires:

- (a) procure that its employees, contractors and agents comply with relevant provisions of this lease in the same manner as the Landlord is required to do; and
- (b) do not act in a way which would result in the Landlord being in breach of this lease or which, if the action was undertaken by the Landlord, would result in the Landlord being in breach of this lease.

2. Grant, Term and holding over

2.1 Term

- (a) The Landlord leases to the Tenant the Car Parking Spaces for the Term subject to the provisions of this lease.
- (b) The Tenant acknowledges that the title to the Land is subject to:
 - (i) any reservations and conditions in the Crown Grant; and
 - (ii) any encumbrances shown on the title.
- (c) The rights granted by this lease include any necessary rights of vehicular and pedestrian ingress and egress over the Land for the purposes of the use and enjoyment of the Car Parking Spaces.

2.2 Monthly tenancy

If the Landlord allows the Tenant to continue to occupy the Car Parking Spaces after the Expiry Date without a further lease being entered into, the Tenant will be a monthly tenant at the same Rent applicable to the preceding year of the lease Term on and from the first day following the Expiry Date and subject to the provisions of this lease insofar as they are applicable to a monthly tenancy. The period of notice required to terminate the monthly tenancy will be three months' notice despite any rule of Law.

2.3 Common Areas

- (a) The Landlord grants to the Tenant at all times during the Term and any renewal or holding over the right for the Tenant, the Tenant's Associates and persons authorised by the Tenant to use the Common Areas subject to the other provisions of this lease including for the purpose of vehicular and pedestrian ingress and egress for and from the Car Parking Spaces.
- (b) The right to use Common Areas granted by clause 2.3(a) is non-exclusive.
- (c) No Rent or other moneys are required to be paid by the Tenant with respect to the rights contained in this clause 2.3 for the Term and any renewal or holding over.

3. Grant of lease for further term

- (a) If a further term is specified in Item 5, then unless the Tenant gives the Landlord a notice not less than 15 months before the Expiry Date that the Tenant does not require a new lease for the further term, the Tenant will take a new lease of the Car Parking Spaces, in accordance with this lease, for the further term specified in Item 5 to commence on the day following the Expiry Date.
- (b) Unless the Landlord receives a notice referred to in clause 3(a) from the Tenant, the Landlord must grant the Tenant a new lease of the Car Parking Spaces for the further term referred to in Item 5.
- (c) The new lease for the further term commences on the day following the Expiry Date and will contain the same provisions as this lease except that:
 - (i) the dates set out in Item 1 and Item 2 will be replaced with the commencement date and expiry date of the renewed lease;
 - (ii) the Term in Item 4 will be replaced by the further term set out in Item 5;
 - (iii) if this lease contains more than one further term in Item 5, Item 5 will be amended to reduce the further terms by one; and
 - (iv) if this lease only contains one further term in Item 5, Item 5 and this clause 3 must be deleted.
- (d) The Landlord must, within 80 Business Days of the commencement date of the new lease for the further term register the new lease in accordance with clause 25.2(a).

4. Rent

4.1 Tenant's covenant

The Tenant must pay the Rent to the Landlord during the Term.

4.2 Payment of Rent

The Rent must be paid:

- (a) on the Commencement Date;
- (b) to the Landlord either:
 - (i) at the address set out in the Details;
 - (ii) by electronic funds transfer to an account nominated in writing by the Landlord; or
 - (iii) to any other payee or address as indicated in writing by the Landlord to the Tenant.

4.3 Parking Levy

If, at any time during the Term, there is a Parking Levy imposed, or the amount of any existing Parking Levy is increased or decreased, the Rent will be increased or decreased, as the case may be, by an amount which permits the Landlord to recover from the Tenant or to refund to the Tenant, as the case may be, the amount of the Parking Levy for each Parking Bay comprising the Car Parking Spaces.

5. Outgoings

5.1 Contributions to Outgoings

In addition to the Rent, the Tenant must pay the Tenant's Share of Outgoings for each Outgoings Year, in accordance with the provisions of this clause.

5.2 Outgoings Budget

The Landlord will prepare and give to the Tenant:

- (a) a budget for the Outgoings for the current Outgoings Year, as soon as practicable after the Commencing Date; and
- (b) a budget for the Outgoings for the following Outgoings Year, as soon as practical before the end of each Outgoings Year.

5.3 Content of Outgoings Budget

A budget given under clause 5.2 must include:

- (a) the Landlord's budgeted expenditure on each of the items comprising the Outgoings; and
- (b) a calculation of the Tenant's Share of Outgoings based on the Outgoings Budget.

5.4 Landlord's right to vary the Outgoings Budget

The Landlord can vary the Outgoings Budget at any time during an Outgoings Year by notice to the Tenant. The notice must contain details of any change in the Tenant's Share of Outgoings.

5.5 Payment by instalments

The Tenant must pay the Tenant's Share of Outgoings by instalments in advance on each Payment Date. Each instalment is to be one-twelfth of the Tenant's Share of Outgoings

for the relevant Outgoings Year, based on the Outgoings Budget (or any variation to the Outgoings Budget under clause 5.4). If an instalment is for a period of less than one month, the instalment for that period is apportioned at a daily rate for the relevant Outgoings Year.

5.6 Delayed budget

If the Outgoings Budget in any Outgoings Year has not been provided to the Tenant by the Landlord before the first Payment Date in that Outgoings Year:

- (a) the Tenant must pay an instalment equal to the instalment payable on the last Payment Date of the previous Outgoings Year on each Payment Date until the Outgoings Budget has been provided to the Tenant by the Landlord; and
- (b) on the first Payment Date after the Outgoings Budget in any Outgoings Year has been provided to the Tenant by the Landlord, the Tenant must pay the difference between what it has paid under clause 5.6(a) and what it should have paid if the Outgoings Budget had been provided before the first Payment Date of that Outgoings Year.

5.7 Statement of actual Outgoings

Within three months after the end of an Outgoings Year the Landlord must give the Tenant a statement (**Landlord's statement**) containing:

- (a) reasonable details of the actual Outgoings for the previous Outgoings Year;
- (b) the Landlord's calculation of the Tenant's Share of Outgoings based on the actual Outgoings;
- (c) if the aggregate of the Outgoings is more than the Outgoings Budget, the amount the Tenant owes the Landlord for the Tenant's Share of Outgoings for the previous Outgoings Year; and
- (d) if the aggregate of the Outgoings are less than the Outgoings Budget, the amount the Landlord owes to the Tenant.

5.8 Reconciliation during the Term

On the first Payment Date after the Landlord gives the Tenant the Landlord's statement, the Tenant must pay any shortfall (or the Landlord must credit the Tenant with any overpayment) of the Tenant's Share of Outgoings for the previous Outgoings Year.

5.9 Reconciliation after the Term

If the Landlord's statement is provided to the Tenant after the expiration or termination of the lease, the Tenant must pay any shortfall (or the Landlord must repay the Tenant any overpayment) of the Tenant's Share of Outgoings for the previous Outgoings Year within 28 days of the statement being provided.

6. Permitted Use

- (a) The Tenant must not use the Car Parking Spaces for any purpose other than for the parking of Vehicles.
- (b) The Tenant must not park the Tenant's Vehicles other than:
 - (i) in the Car Parking Spaces;
 - (ii) during the Normal Operating Hours; and

- (iii) in accordance with the Landlord's access control arrangements for the Car Parking Area.
- (c) The Tenant must:
 - (i) not clean, grease, oil, repair or wash Vehicles in the Car Parking Spaces, the Common Areas or the Car Parking Area;
 - (ii) comply with all rules from time to time made by the Landlord in connection with the Car Parking Area and with all instructions given by any person appointed by the Landlord to control the Car Parking Area (and except in an emergency, such rules and instructions must not be inconsistent with the rights conferred on the Tenant by this lease);
 - (iii) not allow any rubbish to be left in the Car Parking Spaces and must ensure that the Car Parking Spaces are kept clean and tidy; and
 - (iv) not bring or leave in the Car Parking Area or the Common Area any offensive, hazardous or dangerous substance nor do or omit to do any thing which is or may be a nuisance or annoyance to the Landlord or other persons.

7. Repairs and Maintenance

7.1 Landlord's Maintenance obligations

- (a) The Landlord must at its own cost and expense repair and maintain the Car Parking Area, the Car Parking Spaces and the Common Areas during the Term.
- (b) Without limiting the generality of clause 7.1(a), the Landlord must:
 - (i) maintain, in good working order and condition, the plant, equipment, appliances, fittings or fixtures provided under this lease by the Landlord relating to the supply of all services (including the Services);
 - (ii) maintain the Car Parking Area, the Car Parking Spaces and the Common Areas:
 - (A) in good and substantial repair and condition in keeping with comparable commercial car parking areas of a similar nature and quality;
 - (B) in accordance with and to meet all relevant Law and Australian Standards;
 - (iii) take all reasonable actions to prevent the entry of water into the Car Parking Area, the Car Parking Spaces and the Common Areas to keep the Car Parking Area, the Car Parking Spaces and the Common Areas watertight, weatherproof and free of damp, mould and mildew;
 - (iv) remedy any structural defects associated with all or any of the Car Parking Area, the Car Parking Spaces or the Common Areas as soon as is practicable; and
 - (v) rectify all defects in the Car Parking Area, the Car Parking Spaces and the Common Areas, attributable to faulty design, faulty supervision, faulty work, faulty materials or work not having been carried out in a proper and workmanlike manner or in conformity with all applicable Law but excluding any defects caused by any works carried out by the Tenant to the Car Parking Spaces.

- (c) The Landlord is not responsible for maintenance of an item if the need for the repair arises out of the intentional misuse by the Tenant.
- (d) For the purposes of this clause 7.1, "maintain" includes the replacement or renewal of any thing or part of a thing that cannot be repaired or is beyond reasonable economic repair.

7.2 Tenant's remedies for Landlord's failure to maintain

If:

- (a) the Landlord fails to comply with any part of the repair and maintenance requirements set out in this lease; and
- (b) the Tenant gives written notice to the Landlord of the failure and the Landlord fails to carry out the relevant repair and maintenance obligations within seven days of receipt of the Tenant's written notice;

then the Tenant may carry out the relevant repair and maintenance obligations in accordance with all Laws and using its best endeavours not to disrupt other tenants in the Car Parking Area and the reasonable costs and expenses (including costs in the form of salary, wages, leave entitlements, superannuation and other employment overheads) incurred by the Tenant in so doing may be claimed by the Tenant from the Landlord by way of reimbursement.

7.3 Landlord may enter the Car Parking Spaces to maintain

- (a) The Landlord and persons authorised by the Landlord may enter and remain on the such of the Car Parking Spaces as may be required with tools equipment and materials at such reasonable times as is necessary for carrying out repair and maintenance and other works in accordance with clause 7.1 provided that the Landlord has given the Tenant not less than five Business Days prior written notice of the intended date and time of entry, its purpose and likely duration of the intended work (except in the case of an emergency where prior notice is not required) and, if required by the Tenant, the Landlord is accompanied by a representative of the Tenant.
- (b) The Landlord must cause as little disruption as possible to the Tenant in carrying out the work and where reasonable undertake that work outside Normal Business Hours and must also:
 - (i) comply with all reasonable directions of the Tenant at all times during any occupation of or access to the Car Parking Spaces and the conduct of works on the Car Parking Spaces; and
 - (ii) make good any damage to the Tenant's property,

in carrying out repair and maintenance and other works in accordance with clause 7.1.

7.4 Landlord's obligation to repaint

- (a) The Landlord must, at its own cost and expense, repaint:
 - (i) all internal surfaces of the Car Parking Area, Car Parking Spaces (including line marking and directional marking) and Common Area surfaces which were, (as at the date of first occupation of the Car Parking Spaces by the Tenant) or which have subsequently been painted, at least once every five years from the Commencement Date; and

- (ii) all external surfaces of the Car Parking Area which were, (as at the date of first occupation of the Car Parking Spaces by the Tenant) or which have subsequently been painted, at least once every ten years from the Commencement Date (and thereafter within every ten year period of occupation by the Tenant under this lease (as extended)),

to a standard and quality and colour such surfaces were painted as at the date of first occupation of the Car Parking Spaces by the Tenant or the date when the surface was originally painted.

- (b) If a part or parts of the Car Parking Area or Common Areas require repainting sooner or more often than as required under clause 7.4(a) while the Tenant remains in occupation under this lease as a result of natural wear and tear or any other reason not caused or contributed to by the Tenant, the Landlord must undertake such repainting in accordance with clause 7.4(a).

7.5 Tenant's obligation to repair damage

- (a) The Tenant must at its own cost:
 - (i) keep the Car Parking Spaces in the same condition as they were in at the date the Tenant commenced using the Car Parking Spaces (fair wear and tear excepted) including repairing or replacing anything in the Car Park which is damaged or destroyed by the Tenant as a result of any deliberate or negligent act or omission of the Tenant or any Tenant's Associates; and
 - (ii) remove all oil stains from the Car Parking Spaces and if the Tenant fails to do so within seven days of receipt of written notice, pay to the Landlord the costs it incurs in doing so on demand; and
 - (iii) replace all glass broken by the Tenant or any Tenant's Associates.
- (b) Clause 7.5(a) only applies to the extent that the Landlord's insurance in relation to the Car Parking Spaces does not respond to the damage (or if the Landlord has failed to insure, the insurance required to be effected by the Landlord would not have responded to damage) because of any fault on the part of the Tenant or any Tenant's Associates.

8. Car Parking Area Services

8.1 Services to be provided by the Landlord

- (a) The Landlord must, at its own cost and expense, ensure the continued and adequate provision of Services to the Car Parking Area, the Car Parking Spaces and the Common Areas during the Term.
- (b) The Services must be repaired, maintained and operated in accordance with all applicable Law and Australian Standards.

8.2 Replacement and renewal of Services

If any of the Services becomes totally or substantially unusable or inoperable or does not provide an adequate level of service, the Landlord must, within a reasonable time, repair that Service. If it is impracticable or uneconomic to repair a Service within a reasonable time, the Landlord must renew the Service at its own cost and expense.

8.3 Lift service

Except to the extent that it is beyond the reasonable control of the Landlord, the Landlord must provide a lift service in the Car Parking Area at all times.

9. Disease or Illness

9.1 Tenant's obligations

- (a) If infection, notifiable disease or illness occurs in or about the Car Parking Spaces as a result of an act or omission of the Tenant then the Tenant must:
 - (i) immediately give written notice to the Landlord; and
 - (ii) at the Tenant's cost make arrangements for the Car Parking Spaces to be thoroughly fumigated, disinfected or treated in accordance with applicable Laws.
- (b) If the Tenant fails to make these arrangements then the Landlord may give notice to the Tenant of the Landlord's intent to do so and if the Tenant still fails to make such arrangements then the Landlord may but is not bound to arrange for the Car Parking Spaces to be fumigated, disinfected or treated with the cost being attributable to the Tenant and recoverable by action.

9.2 Landlord's obligations

- (a) If an infection, notifiable disease or illness occurs in or about the Car Parking Spaces or the Car Parking Area otherwise than as a result of an act or omission of the Tenant, then the Landlord must:
 - (i) immediately give written notice to the Tenant; and
 - (ii) at the Landlord's cost make arrangements for the Car Parking Spaces or Car Parking Area or both to be thoroughly fumigated, disinfected or treated in accordance with applicable Laws.
- (b) If the Landlord fails to make these arrangements then the Tenant may give notice to the Landlord of the Tenant's intent to do so and if the Landlord still fails to make such arrangements then the Tenant may but is not bound to arrange for the Car Parking Spaces to be fumigated, disinfected or treated with the cost being attributable to the Landlord and recoverable by action.

9.3 Landlord must control pests

Without limiting the operation of clause 7, the Landlord must keep the Car Parking Area free of rodents, termites, cockroaches and other vermin.

10. Asbestos

- (a) The Landlord warrants that there is no asbestos present in the Car Parking Area.
- (b) If asbestos is found or known to be present in the Car Parking Area, the Landlord must:
 - (i) remove it from the Car Parking Area;
 - (ii) at its cost, carry out the work to remove the asbestos in a proper and workmanlike manner and in accordance with all applicable Laws; and
 - (iii) indemnify the Tenant against all costs, Losses or damage incurred or suffered by the Tenant in connection with the removal of the asbestos and the reinstatement of the Car Parking Area.

11. Alterations and additions

11.1 Restriction on Tenant's alterations

The Tenant must not make or permit to be made any alterations or additions in or to the Car Parking Spaces except with the Landlord's prior written consent (which must not be unreasonably withheld or delayed).

11.2 Alterations to Car Parking Area by Landlord

- (a) The Landlord may carry out alterations to the Car Parking Area during the Term without the prior written consent of the Tenant.
- (b) When carrying out any alterations to the Car Parking Area, the Landlord must use its best endeavours not to alter or interfere with the Car Parking Spaces, the Common Areas or the Tenant's entitlement to quiet enjoyment of the Car Parking Spaces.
- (c) Prior to carrying out any alterations to the Car Parking Area, the Landlord must provide to the Tenant details of:
 - (i) the general nature and extent of the intended work;
 - (ii) the period and hours during which it is intended to be carried out; and
 - (iii) the anticipated interference with the Tenant's use of the Car Parking Spaces or the Common Areas until the work is completed.
- (d) The Landlord covenants to have any works under this clause 11.2:
 - (i) carried out and completed in a proper and workmanlike manner with high quality materials, workmanship and finish in keeping with the standard quality and appearance of the Car Parking Area; and
 - (ii) undertaken in such a way as to:
 - (A) minimise any inconvenience or nuisance to the Tenant and the Tenant's entitlement to quiet enjoyment and use of the Car Parking Spaces;
 - (B) comply with all Laws and the requirements of any Government Body including, without limitation, all planning requirements;
 - (C) ensure clear and direct access for operations within the Car Parking Spaces and to and from the adjacent roads is provided at most times during the work;
 - (D) minimise any noise, vibration or dust;
 - (E) ensure that the persons engaged in the work minimise the extent to which any Vehicles, site huts, buildings, structures, equipment or materials are kept on the car parks or roads of the Car Parking Spaces, the Common Areas or the Car Parking Area; and
 - (F) continue to provide proper and unimpeded access to the Car Parking Spaces from outside the Car Parking Spaces and ensure that the access is not affected during or as a result of the work.

- (e) The Landlord must, at its own cost and expense:
 - (i) carry out any work on or to the Car Parking Spaces required by any relevant Government Body as a consequence of the work including any consequential alterations to and making good of the Car Parking Spaces or any property of the Tenant; and
 - (ii) during the course of the work, regularly consult with the Tenant as to the time at which and the manner in which the work is carried out so as to minimise the disruption to the use of the Car Parking Spaces by the Tenant and any permitted sub-tenants or licensees from the Tenant.
- (f) Except in cases of emergency, the Landlord must give the Tenant at least 40 Business Days notice of any alteration or refurbishment of the Car Parking Area which is likely to adversely affect the operations of the Tenant or the Tenant's use of the Car Parking Spaces or the Common Areas.

12. Additional Landlord covenants

12.1 Quiet enjoyment

The Landlord will, subject to the provisions of this lease, allow the Tenant to peaceably hold and enjoy the Car Parking Spaces during the Term without any interruption by the Landlord or by any person claiming through the Landlord.

12.2 Compliance with Laws

The Landlord at its cost must comply with all Laws relating to the Car Parking Area and the Car Parking Spaces which are not the responsibility of the Tenant under this lease or another tenant or occupier of the Car Parking Area. If compliance with the Law is the responsibility of another tenant or occupier of the Car Parking Area the Landlord must ensure that the tenant or occupier complies with its obligations as soon as practicable.

12.3 Viewing

- (a) The Landlord or its agents may enter the Car Parking Spaces at all reasonable times in accordance with clause 12.3(b) to view the Car Parking Spaces with:
 - (i) prospective tenants of the Car Parking Spaces but only during the period of six months prior to the Expiry Date; or
 - (ii) prospective purchasers of the Land.
- (b) If the Landlord or its agents exercise their right to enter the Car Parking Spaces under clause 12.3(a), the following conditions apply:
 - (i) the Landlord must give prior notice to the Tenant of its intention to enter and inspect the Car Parking Spaces;
 - (ii) the Tenant must receive this notice at least two Business Days before the Landlord enters and inspects the Car Parking Spaces;
 - (iii) the Landlord must be accompanied by the Tenant or the Tenant's nominated representative;
 - (iv) the Landlord must comply with the Tenant's reasonable requirements and must not interfere with or disrupt the Tenant's operations; and
 - (v) if the Landlord or its agent makes any record of the state or condition of the Car Parking Spaces (or any area occupied by the Tenant) by any

means, it must, unless it has obtained the Tenant's prior written consent, keep the record confidential and must not release it except:

- (A) as required by law; or
 - (B) to a professional adviser or consultant of the Landlord or the Tenant; and
 - (C) to any prospective financier.
- (c) If the Landlord releases any record under clause 12.3(b)(v) it must use its best endeavours to do so in circumstances which preserve the confidentiality of the record. The Landlord must instruct any recipient that the record is confidential and obtain from them an undertaking to keep the record confidential.

12.4 Cleaning

- (a) The Landlord must arrange and ensure that cleaning of the Car Parking Area and the Common Areas is undertaken (either by the Landlord or any suitably qualified contractor) on a regular basis.
- (b) In carrying out the cleaning services required under clause 12.4(a), the Landlord must use its best endeavours or must ensure that the Landlord's contractors use their best endeavours to:
 - (i) minimise undue interference to the occupation, use or enjoyment of the Car Parking Spaces by the Tenant;
 - (ii) carry out the necessary work without creating undue nuisance or interference with the use and enjoyment of the Car Parking Spaces; and
 - (iii) take reasonable measures to protect people and property.

If either party becomes aware of any act, matter or thing that may affect the protection of people and property then the relevant party must notify the other as soon as practicable.

12.5 Graffiti

The Landlord must use its reasonable endeavours:

- (a) not to allow the defacement of any walls, floors or surfaces on, in or upon any buildings or structures on the Land so as not to detract from the amenity and high-quality of the Car Parking Area, the Common Areas and the Car Parking Spaces; and
- (b) to remove as soon as is practicable all graffiti from any external or internal surfaces of the Car Parking Area, the Common Areas and all other areas and buildings comprising the Land.

12.6 Landlord to act reasonably

If the permission, consent or approval of the Landlord is required in connection with any matter or thing that permission, consent or approval must not be unreasonably withheld or delayed. If the Landlord is entitled to give any directions, issue instructions or specify its requirements in relation to any matter or thing, those instructions, directions and requirements must be reasonable and the Landlord must act reasonably. A permission, approval or consent may be given conditionally or unconditionally. Any conditions imposed by the Landlord must be reasonable.

12.7 Notices affecting Car Parking Spaces

If the Landlord receives a notice or Requirement from a Government Body which relates to:

- (a) planning permits or development approvals;
- (b) rezoning of land;
- (c) compulsory acquisition of land;
- (d) revaluation;
- (e) resumption of land;
- (f) road widening; or
- (g) interruption of services,

which would or could affect the Land or the use of the Land, the Landlord must give a copy of the notice to the Tenant as soon as practical after it is received by the Landlord.

12.8 Mortgagee's consent

The Landlord must obtain the unconditional consent to this lease of any mortgagee or caveator of the Land from time to time at its cost and in a form reasonably acceptable to the Tenant and promptly provide a copy to the Tenant.

13. Access to the Car Parking Spaces

13.1 Access time

The Landlord agrees to give the Tenant unrestricted access to the Car Parking Spaces and the Common Areas at all times. The Tenant acknowledges that the entrance to the Car Parking Area may be locked outside the Normal Operating Hours however this will not prevent vehicles entering or exiting the Car Parking Area using an Access Device.

13.2 Access devices

- (a) The Landlord will, at the Commencement Date, provide the Tenant with a sufficient number of keys or magnetic cards or other devices (**Access Devices**) reasonably required by the Tenant for the purposes of entry into the Car Parking Area and Car Parking Spaces and the use of lifts during and outside of Normal Operating Hours.
- (b) The Landlord will, if it changes the access system to the Car Parking Area or Car Parking Spaces or both in place at the Commencement Date provide the Tenant, at the cost of the Landlord, replacement Access Devices.
- (c) The Tenant must ensure that the Access Devices are:
 - (i) kept secure at all times;
 - (ii) not duplicated nor is anyone other than the Tenant permitted to have use of the Access Devices; and
 - (iii) returned to the Landlord upon the expiration or sooner determination of this lease.

13.3 Lost access device

The Landlord (in the absence of a negligent or wilful act or omission of the Landlord) is not responsible or liable to the Tenant in any way if an Access Device comes into the possession of an unauthorised person.

13.4 Payment for Access Devices

If the Landlord provides the Tenant with Access Devices or keys to gain access to the Car Parking Area, the Tenant must:

- (c) notify the Landlord as to the number of Access Devices or keys required by the Tenant;
- (d) except as otherwise provided in this lease, pay to the Landlord the cost of the Access Devices or keys;
- (e) give written notice to the Landlord if a Access Device or key is lost or stolen; and
- (f) pay the cost of any replacement Access Device or key issued by the Landlord.

14. Signs

14.1 Restriction on signage

- (a) The Tenant must not paint, affix or install signs or notices on the Car Parking Area or the Land without the prior written consent of the Landlord.
- (b) Subject to clause 14.1(a), the Tenant must not display or permit any person to display from or affix to the Car Parking Area any sign, advertisement or placard visible from outside the Car Parking Area.

14.2 Repairs

The Tenant will not be required to remove or repair any damage caused by the removal of any signs or notices painted affixed or installed by the Tenant with the consent of the Landlord and will not be liable for any costs incurred by the Landlord in the removal of such signs or notices. Any signs or notices left on or at the Car Parking Area by the Tenant at the Expiry Date or sooner determination of this lease will become the property of the Landlord.

15. Common Areas

15.1 Landlord control of Common Areas

- (a) The parties acknowledge that the Landlord has control over the Common Areas of the Car Parking Area.
- (b) The Landlord may:
 - (i) renovate, alter or modify the Common Areas without consent of the Tenant if the renovations, alteration or modification will not detrimentally affect the Tenant's use of the Common Areas; or
 - (ii) hold functions or erect temporary structures or displays in the Common Areas without consent of the Tenant.

15.2 Illumination of Common Areas

The Landlord must ensure that the Common Areas are adequately illuminated while in use for the safety of users.

15.3 Restrictions relating to the Common Areas

In respect of the Common Areas and any parts of them, the Landlord (acting reasonably) may:

- (a) restrict access to particular tenants or classes of persons;
- (b) restrict or prohibit access during certain hours or days; or
- (c) close them temporarily for the purpose of repair renovation or service;

provided that such restrictions or closures are not inconsistent with the provisions of this lease with regard to the Tenant's use and enjoyment of the Car Parking Spaces and the use and enjoyment of the Car Parking Spaces by the Tenant's Associates and authorised visitors must not unreasonably derogate from the Tenant's entitlements under this lease to use the Common Areas.

16. Insurance and Indemnities

16.1 Risk

The Tenant uses and accesses the Car Parking Area, the Common Areas and the Car Parking Spaces and occupies the Car Parking Spaces at its own risk and releases the Landlord from all claims resulting from any loss, damage, death or injury in connection with the Car Parking Area, the Common Areas and the Car Parking Spaces and the use, access and occupation of the Car Parking Area, the Common Areas and the Car Parking Spaces by the Tenant except to the extent that such claims arise out of the Landlord's negligence.

16.2 Insurance

The Tenant must take out and maintain a public risk insurance policy applicable to the Car Parking Area and the Car Parking Spaces for an amount not less than the amount set out in Item 6 which includes the indemnities given by the Tenant to the Landlord in the lease in respect of any single claim or such higher amount as the Landlord notifies the Tenant in writing from time to time.

16.3 Insurance Requirements

In effecting and maintaining the insurances required under clause 16.2, the Tenant must ensure that each policy:

- (a) is taken out in the name of the Tenant and notes the Landlord's interest in the Car Parking Spaces;
- (b) includes a clause enabling one insured person to claim against the insurer where another insured person would have been entitled to claim against the insurer but is precluded from doing so for any reason including, but not limited to, a breach of the policy by that other insured person;
- (c) includes a cross liability clause enabling one insured person to claim against the insurer even if the party making the claim against that insured person is also insured under the policy; and

- (d) includes a clause waiving the insurer's rights of subrogation against all the insured persons.

16.4 Maintain insurance

The Tenant must maintain the insurance policies referred to in clause 16.2 throughout the term of this lease.

16.5 Tenant's indemnity

The Tenant must indemnify the Landlord from and against all claims, actions, proceedings, demands, losses, damages, costs and expenses for which the Landlord becomes liable resulting from any act or omission negligent or otherwise on the part of the Tenant but only to the extent of such act or omission.

16.6 Continuing obligations

The indemnities contained in clause 16.5 are continuing obligations of the parties separate and independent from any other obligations of the parties and survive the expiration or sooner termination of this lease.

16.7 Evidence of insurance

The Tenant must provide a copy of the certificate of currency for each insurance policy required to be held by the Tenant under this lease within 10 Business Days of a request by the Landlord.

16.8 Tenant self insures

The Landlord acknowledges that so long as the Tenant is The Crown in Right of Tasmania, the Tenant is not required to take out the contracts of insurance referred to in this clause 16 and may cover its own risk in which case the Landlord is entitled to rely on the indemnities contained in this Lease.

17. Inability to use or occupy the Car Parking Spaces

17.1 Suspension of rent

- (a) If:
 - (i) the whole or any part of the Car Parking Area, including the Car Parking Spaces, is unfit for occupation or use by the Tenant for the Permitted Use, including as a result of damage; or
 - (ii) the usual and substantial means of access to the Car Parking Area or the Car Parking Spaces is interrupted,

then the whole or a proportionate part of any Payment payable by the Tenant under this lease will be suspended. The amount suspended will be determined by reference to the nature and extent of the damage sustained or interruption to access to the Car Parking Area or the Car Parking Spaces.

- (b) The suspension of any Payment payable by the Tenant under this lease will continue until:
 - (i) the Car Parking Area is made fit for the occupation of the Tenant;
 - (ii) there is no longer any interruption to usual and substantial means of access to the Car Parking Area or the Car Parking Spaces; or

- (iii) the lease is terminated under the provisions of this lease.
- (c) If a dispute arises as to the duration or extent of an abatement the dispute must be dealt with under the *Commercial Arbitration Act 2011* (Tas).

17.2 Damage or destruction

- (a) If the whole or part of the Car Parking Area, the Common Areas or the Car Parking Spaces is damaged resulting in the whole or part of the Car Parking Area, the Common Areas or the Car Parking Spaces being unfit for the occupation and/or use of the Tenant, then the Landlord must promptly repair the damage to and reinstate the Car Parking Area, the Common Areas or the Car Parking Spaces as soon as is practicable after the date the damage occurred.
- (b) If:
 - (i) the Landlord does not:
 - (A) substantially commence works to repair the damage to the Car Parking Area, the Common Areas and the Car Parking Spaces within a reasonable time (but in any case not later than three months) after the date on which the damage occurred; or
 - (B) complete the works required to repair the damage to and reinstate the Car Parking Area, the Common Areas and the Car Parking Spaces within 12 months of the date on which the damage occurred; or
 - (ii) the Landlord, acting reasonably, determines that the damage or destruction to the Car Parking Area, the Common Areas or the Car Parking Spaces is so extensive that the whole of the Car Parking Spaces must be rebuilt,

the Landlord must provide or procure for the benefit of the Tenant replacement car parking spaces of the same number and in a location comparable to the location of the existing Car Parking Spaces (but not necessarily within the Car Parking Area) and which are capable of serving the New Crown Premises.
- (c) Either party may terminate this lease by giving not less than 15 Business Days written notice to the other party if:
 - (i) in the case of a termination by the Landlord, the Tenant does not accept the replacement car parking spaces provided or procured by the Landlord within a reasonable period of time following notification by the Landlord to the Tenant of the location of the replacement car parking spaces; or
 - (ii) in the case of a termination by the Tenant, the Landlord does not provide or procure for the benefit of the Tenant the replacement car parking spaces under clause 17.2(b) within a reasonable period after the expiry of the periods in clauses 17.2(b)(i)(A) and 17.2(b)(i)(B) or as soon as is practicable after the Landlord makes a determination under clause 17.2(b)(ii).
- (d) The Landlord is not required to provide or procure the replacement car parking spaces under clause 17.2(b) and the Tenant may not terminate this lease under clause 17.2(c)(ii) if, and the Payments will not abate, to the extent that:
 - (i) the damage or destruction is caused or contributed to by the Tenant or Tenant's Associates; and

- (ii) any material amount of the insurance money otherwise recoverable under an 'Industrial Special Risk' insurance policy in respect of the damage or destruction cannot be recovered because of any act, omission, default or negligence by the Tenant or Tenant's Associates.
- (e) No liability will attach to the Landlord or to the Tenant if this lease ends pursuant to this clause. The rights of either party for any preceding breach or non observance of any covenant or provision of this lease are not affected by this clause.

18. Assignment and mortgages

18.1 Transfers and dealings

The Tenant must not assign, transfer, sublet, part with, share the possession of, grant any mortgage, charge or otherwise deal with the whole or part of the Car Parking Spaces or this lease without the Landlord's prior written consent.

18.2 Landlord not to unreasonably withhold consent

The Landlord will not unreasonably withhold its consent to the Tenant assigning, transferring or subleasing where:

- (a) the proposed assignee, transferee, subtenant is:
 - (i) a purchaser or transferee of the freehold interest in the Multi-Purpose Building - Crown Premises from the Tenant or the Crown; or
 - (ii) a holder of a leasehold interest in the Multi-Purpose Building - Crown Premises granted by the Tenant or the Crown;
- (b) at the time the Tenant notifies the Landlord of its wish to assign or transfer this lease or sublease the Car Parking Spaces the Tenant is not in default under this lease;
- (c) there are no subsequent defaults by the Tenant;
- (d) in the case of a transfer or assignment, the proposed transferee or assignee enters into a deed with the Landlord in a form reasonably required by the Landlord pursuant to which:
 - (i) the Landlord agrees with the transferee or assignee to be bound by all of the Landlord's obligations under this lease (including any obligations which do not transmit by operation of law); and
 - (ii) the transferee or assignee agrees with the Landlord to be bound by all of the Tenant's obligations under this lease (including any obligations which do not transmit by operation of law); and
- (e) the Tenant pays the reasonable costs and disbursements incurred by the Landlord in giving its consent.

18.3 Release of Tenant

- (a) Upon any assignment or transfer of this lease by the Tenant, the existing Tenant is not released from liability under the lease by the Landlord and remains liable to comply with the lease for the remainder of the Term.
- (b) Despite clause 18.3(a), the Landlord releases the existing Tenant in respect of any liability that arises in respect of matters occurring under the lease on and from

the Expiry Date of the current Term if the Tenant, at the time of the assignment of the lease, relinquishes the benefit of any further terms that may be provided for in this lease.

18.4 Assignment to related bodies

Despite clauses 18.1 and 18.2, the Landlord's consent will not be required to an assignment, transfer, licence or sublease to an instrumentality of the Crown in Right of Tasmania or statutory body.

18.5 Change in control

- (a) This clause 18.5 only applies if the Tenant is not the Crown in Right of Tasmania or an instrumentality of the Crown in Right of Tasmania or statutory body.
- (b) If:
 - (i) the Tenant is a company neither listed nor wholly owned by a company listed on the Australian Stock Exchange; and
 - (ii) there is a proposed change in the shareholding of the Tenant or its holding company so that a different person or group of persons will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings,

then before the proposed change can take place, the Tenant must obtain the Landlord's consent.

- (c) The Landlord must give its consent if the Tenant:
 - (i) is not in default under this lease;
 - (ii) proves to the Landlord's reasonable satisfaction that if the proposed change takes place, the Tenant will be as:
 - (A) respectable and responsible;
 - (B) unlikely to create a security interest risk in the Car Parking Area; and
 - (C) financially sound and capable of complying with the Tenant's payment obligations under this lease and under any renewal of this lease,

as it was immediately before the change was proposed; and
 - (iii) gives the Landlord any security the Landlord reasonably requires in connection with the Tenant's obligations under this lease.

19. Subdivision or strata titling

The Landlord may Subdivide or grant leases, licences, easements or other rights over the Car Parking Area at any time during the Term provided that such actions do not materially or substantially affect the Tenant's rights under this lease.

20. Default and termination

20.1 Landlord may rectify Tenant's failure

- (a) If the Tenant fails to:

- (i) pay any money that this lease requires it to pay to any third party; or
- (ii) comply with any of its other obligations under this lease,

and does not remedy the failure within a reasonable time after being required to do so by notice from the Landlord, the Landlord may make the payment or do anything and incur any cost necessary to comply with the Tenant's obligation.

- (b) The Tenant must reimburse the Landlord for the amount paid or the cost incurred within 10 Business Days of demand.
- (c) If the Tenant disputes the Landlord's right to act under this clause or the amount of reimbursement claimed then until the dispute is resolved the Tenant will not be required to pay the amount in dispute. Subject to clause 22, nothing in clause 20.1(c) affects the Landlord's right to institute legal proceedings.

20.2 Tenant may rectify Landlord's failure

- (a) If the Landlord fails to:
 - (i) pay any money that this lease requires it to pay to any third party; or
 - (ii) comply with any of its other obligations under this lease,
 and does not remedy the failure within a reasonable time after being requested to do so by notice from the Tenant, the Tenant may make the payment or do anything and incur any cost necessary to comply with the Landlord's obligation.
- (b) The Landlord must reimburse the Tenant for the amount paid or the cost incurred within 10 Business Days of demand provided that the Tenant has not exercised a self-help right elsewhere in this lease and sought reimbursement from the Landlord.
- (c) If the Landlord fails to reimburse the Tenant within 10 Business Days of demand then the Tenant may deduct the amount outstanding from any payments due to the Landlord by the Tenant under this lease.
- (d) If the Landlord disputes the Tenant's right to act under this clause or the amount of reimbursement claimed then until the dispute is resolved the Landlord will not be required to pay and the Tenant will not be entitled to deduct the amount in dispute.

20.3 Interest

- (a) Where any money payable under this lease is not paid by the due date interest is payable on the amount outstanding.
- (b) The interest payable in respect of any month will be an amount equivalent to the Interest Rate.
- (c) The interest will be calculated daily and compounded monthly from and including the day on which the payment was due up to but excluding the day on which the payment is made.

20.4 Tenant's default and re-entry

- (a) The Tenant commits an Event of Default if:
 - (i) **rent in arrears:** the Rent is not paid on the due date for payment;

- (ii) **failure to pay money:** any other money due and payable by the Tenant to the Landlord is not paid within five Business Days after the Landlord demands payment;
 - (iii) **failure to effect repairs:** the Tenant does not commence and complete the repairs required by any notice given under this lease within a reasonable time after the notice is given (being not less than 15 Business Days);
 - (iv) **liquidation:** the Tenant enters into liquidation, administration or an order is made or a resolution is passed for the winding up of the Tenant (except for the purpose of amalgamation or solvent reconstruction) or a receiver or official manager or administrator or liquidator is appointed to any property of the Tenant;
 - (v) **assignment:** the Tenant assigns this lease other than in accordance with clause 18; or
 - (vi) **other breach:** the Tenant commits any other breach of the terms of this lease, which breach is not remedied within 15 Business Days after the Landlord has given written notice to the Tenant of such breach.
- (b) If the Tenant commits an Event of Default the Landlord must give the Tenant a notice that it has committed that Event of Default.
- (c) If after receipt of the notice the Tenant fails to remedy the Event of Default:
- (i) if constituted by failure to pay Rent, by paying the Rent within 10 Business Days of receipt of the notice;
 - (ii) if constituted by failure to pay any other money due and payable under this lease, by paying the amount due and payable within 10 Business Days after the Landlord demands payment;
 - (iii) if not constituted by failure to pay rent or other money but if capable of being remedied, by undertaking in writing to the Landlord within 15 Business Days to remedy the Event of Default and then within a reasonable time remedying the Event of Default;
 - (iv) if not capable of being remedied but for which the Landlord can be compensated, by paying reasonable compensation to the Landlord within 15 Business Days; or
 - (v) if not capable of being remedied and the Landlord cannot be compensated for the Event of Default,
- then the Landlord may re-enter upon the Car Parking Spaces and thereupon this lease will be determined absolutely.
- (d) The Landlord must not re-enter, forfeit or otherwise terminate this lease because of any breach or repudiation of this lease by the Tenant other than in accordance with this clause 20.4.
- (e) The Landlord must mitigate any damage it suffers because of a breach of this lease by the Tenant.

21. Essential terms

- (a) This clause 21 only applies if the Tenant is not the Crown in Right of Tasmania or an instrumentality of the Crown in Right of Tasmania or statutory body.

- (b) It is agreed that the following obligations by the Tenant are essential terms of this lease:
 - (i) the covenant to pay rent throughout the Term as required by this lease;
 - (ii) the covenant to pay Outgoings throughout the Term as required by this lease; and
 - (iii) the covenants regarding assignment and change in Control.
- (c) The Landlord may treat the breach by the Tenant of an essential term of this lease as a repudiation of this lease and terminate this lease for breach of the essential term and for repudiation and is then entitled to immediate possession of the Car Parking Spaces.
- (d) The Tenant covenants to compensate the Landlord in respect of any breach of an essential term of this lease and the Landlord is entitled to recover damages from the Tenant in respect of such breaches, including, if this lease is terminated by the Landlord as a consequence, the Landlord's loss of the benefit of the Tenant performing its obligations under this lease from the date of that termination until the Expiry Date. The Landlord's entitlement to damages is in addition to any other remedy or entitlement including termination of this lease.
- (e) The acceptance by the Landlord of arrears or of any late payment of rent, rates, taxes, outgoings or operating expenses, does not constitute a waiver of the essentiality of the Tenant's obligation to make those payments or in respect of the Tenant's continuing obligation to make those payments during the Term.
- (f) The Landlord must take all reasonable steps to mitigate its loss.

22. Dispute resolution

22.1 Dispute Notice

If any dispute arises between the Tenant and the Landlord (**Dispute**), then either party may give to the other a notice adequately identifying the matters the subject of that Dispute (**Dispute Notice**).

22.2 Negotiation

An Authorised Representative of both parties must meet within 10 Business Days of the Dispute Notice and endeavour to resolve the Dispute in good faith.

22.3 Time for resolution

- (a) If a settlement meeting does not take place between the Authorised Representatives by the time required or, after one month of the settlement meeting the Dispute remains unresolved, the Chief Executive Officer of the Landlord and the Secretary of the Department (or such other person nominated from time to time by the Tenant) must meet within a further 10 Business Days after that date and endeavour to resolve the Dispute in good faith.
- (b) If clause 22.3(a) applies and a settlement meeting does not take place by the time required or, after one month of the settlement meeting the Dispute remains unresolved, either party may commence litigation proceedings.
- (c) Neither party may commence or maintain any proceedings in relation to any Dispute until it has complied with this clause 22 (except for proceedings seeking injunctive or declaratory relief).

22.4 Process not to apply

This clause 22 does not apply to the following disputes or differences:

- (a) a dispute or difference as to the non-payment of any liquidated sum exceeding \$10,000;
- (b) a dispute or difference which involves or may involve a third party;
- (c) a dispute or difference where the remedies sought by a party will include an injunction; or
- (d) any dispute or difference if the Tenant for the time being is not the Minister, an agency of the Crown in Right of the State of Tasmania or a Government Business Enterprise (for the purposes of the *Government Business Enterprises Act 1995*).

23. GST

- (a) Unless expressly stated otherwise, amounts expressed payable or any other consideration provided, or to be provided, under or in connection with this lease, are GST exclusive.
- (b) Unless expressly stated otherwise, a party (**Supplier**) making a taxable supply under or in connection with this lease, may recover from the party (**Recipient**) to whom the taxable supply is made, an additional amount of GST calculated by multiplying the value of the consideration payable or to be provided for the supply (without any deduction or set-off) by the prevailing GST rate (**Additional Amount**).
- (c) The Additional Amount must be paid at the same time and in the same manner when payment of the consideration for the taxable supply is due if the consideration is monetary. If the consideration is non-monetary, the Additional Amount must be paid within 10 Business Days after the Supplier provides a tax invoice to the Recipient.
- (d) The Supplier must provide a valid tax invoice to the Recipient for any taxable supply made under or in connection with this lease.
- (e) A Supplier's right to payment for a taxable supply is subject to a valid tax invoice being delivered to the Recipient of the taxable supply.
- (f) If the amount of GST recovered by the Supplier from the Recipient differs from the amount of GST payable at law by the Supplier in respect of the supply, the amount payable by the Recipient to the Supplier must be adjusted accordingly.
- (g) If, under the terms of this lease, one party is required to indemnify another, then the amount by which the indemnifying party indemnifies the other party (the **indemnity amount**) does not include any amount for which the indemnified party has claimed, or is entitled to claim, an input tax credit. However, to the extent that the receipt of any indemnity amount renders the recipient of that payment liable to pay GST, the other provisions of this clause apply.
- (h) If the consideration for the supply is a payment or reimbursement for, or contribution to, any expense or liability incurred by the Supplier to a third party, the amount to be paid reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the Supplier is entitled in respect of the expense or liability.

- (i) Where any amount payable under this lease is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 23 as if it were an actual payment made pursuant to this lease.
- (j) In this clause 23, unless the context otherwise requires expressions defined in the GST Act and the GST Laws have the same meaning when used in this clause 23.

24. Set off

The Tenant must not set off against Payments due by the Tenant to the Landlord any amount due from the Landlord to the Tenant whether or not the amount due from the Landlord arises under this lease.

25. Costs, registration and duty

25.1 Costs

- (a) Each party is responsible for its own costs and expenses incurred in relation to the negotiation, preparation and execution of this lease.
- (b) The Tenant must pay to the Landlord on demand all reasonable costs and charges incurred by or on the Landlord's behalf in relation to:
 - (i) any consent required under this lease if caused by the Tenant;
 - (ii) any assignment subletting or similar arrangement;
 - (iii) any surrender or ending of this lease unless this lease ends because the Term ends; and
 - (iv) any breach by the Tenant of its obligations under this lease.
- (c) The Landlord must pay to the Tenant on demand all reasonable costs and charges incurred by or on the Tenant's behalf in relation to:
 - (i) any consent required under this lease if caused by the Landlord;
 - (ii) any assignment subletting or similar arrangement; and
 - (iii) any breach by the Landlord of its obligations under this lease.

25.2 Registration

- (a) Subject to clause 25.2(b), the Landlord must, at the Tenant's cost, ensure this lease is registered by the Recorder of Titles pursuant to the *Land Titles Act 1980* within 20 Business Days of the Commencement Date.
- (b) The Landlord must, at its own cost, obtain the relevant survey plan required to ensure the Lease is capable of registration within the timeframe required under this lease.
- (c) The Landlord and the Tenant must:
 - (i) duly execute the lease that is prepared in accordance with the requirement to register in clause 25.2(a); and
 - (ii) do everything that is reasonably necessary and within their power to facilitate the registration of that lease in accordance with the *Land Titles Act 1980* (Tas).

25.3 Lease is valid and enforceable regardless of registration

The validity and enforceability of this lease is not conditional on the registration of this lease under the *Land Titles Act 1980* (Tas). This lease is intended to take effect as a lease irrespective of its registration.

25.4 Application of *Local Government (Building Miscellaneous Provisions) Act 1993* (Tas)

If this lease constitutes a subdivision for the purposes of the *Local Government (Building and Miscellaneous Provisions) Act 1993* (Tas), the Landlord and the Tenant must, in respect of each lease, execute and register eight leases for consecutive terms with such modifications as may be necessary to preserve the continuity of the Term.

25.5 Duty

The Tenant must pay any duty on this lease.

26. Notices

26.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this lease must be:
 - (i) in legible writing in the English language;
 - (ii) subject to clauses 26.1(b) and 26.1(c), signed by or on behalf of the sender or by a lawyer for the sender;
 - (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
 - (iv) left or sent in accordance with clause 26.2.
- (b) A printed or copy signature is sufficient for the purposes of sending any Notice by facsimile.
- (c) A Notice sent by email is taken to have been signed by the sender.
- (d) A Notice must not be given orally.

26.2 Method and address for delivery

- (a) Subject to clause 26.2(b), a Notice must be:
 - (i) left at the intended recipient's address set out in the Details;
 - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details;
 - (iii) sent by facsimile to the intended recipient's facsimile number (if any) set out in the Details; or
 - (iv) sent by email to the intended recipient's email address (if any) set out in the Details.

- (b) If the intended recipient of a Notice has notified the sender of another address, facsimile number or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address, facsimile number or email address (as applicable) last notified by that intended recipient.

26.3 Time of receipt

- (a) Subject to clause 26.3(b), a Notice is taken to have been received by the intended recipient:
 - (i) if left at the intended recipient's address, at the time of delivery;
 - (ii) if sent by prepaid ordinary mail, on the third Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting;
 - (iii) if sent by facsimile, at the time shown in the transmission report as the time when the whole Notice was sent; and
 - (iv) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00 p.m. on a Business Day, the Notice is taken to be received at 9.00 a.m. on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 26.3(a) and 26.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

26.4 Other modes or places of service

Nothing in this lease limits or excludes any other mode or place of service required by an applicable Law.

27. Miscellaneous

27.1 Governing law

This lease is governed by the Laws applying in Tasmania.

27.2 Dispute jurisdiction

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this lease.

27.3 Entire agreements clause

This lease forms the entire agreement of the parties in respect of its subject matter. The only enforceable obligations of the parties in relation to the subject matter of this lease are those that arise out of the provisions contained in this lease. All prior agreements in relation to the subject matter of this lease are merged in and superseded by this lease unless expressly incorporated in this lease as an annexure, an appendix, an attachment or by reference.

27.4 Liability

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this lease, binds them jointly and each of them severally.

27.5 Benefit

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

27.6 Compliance with obligations

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under this lease:
 - (i) comply with the provisions of this lease related to that performance; and
 - (ii) do not conduct themselves in a way that would result in the party being in breach of this lease or that, if the conduct was undertaken by the party, would result in the party being in breach of this lease.
- (b) If a party is prohibited from doing anything under this lease, that party must not knowingly assist, authorise or allow any other person to do that thing.

27.7 Exclusion of statutory covenants

The covenants, powers and provisions implied by any Statute do not apply to this lease and are expressly negated.

27.8 Severance

If a provision of this lease is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this lease and the remaining provisions of this lease:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this lease.

27.9 Counterparts

- (a) This lease may be entered into in any number of counterparts.
- (b) A party may execute this lease by signing any counterpart.
- (c) All counterparts, taken together, constitute one agreement.
- (d) If this lease is executed as a deed, it does not take effect against a party until it has been signed by all parties and delivered, unless it is a deed poll or is intended to take effect immediately when delivered by one or more parties.

27.10 Further assurance

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this lease.

27.11 Business Days

If the day on or by which an act, matter or thing is to be done under this lease is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

27.12 No partnership or agency

- (a) Unless stated to the contrary in this lease:
- (b) nothing contained or implied in this lease will:
 - (i) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose;
 - (ii) create, or be taken to create, a partnership or joint venture; or
 - (iii) create, or be taken to create, an agency or trust; and
- (c) a party must not represent or hold itself out to be a partner, joint venturer, agent or representative of another party.

27.13 Amendment

This lease may only be amended or supplemented in writing signed by the parties.

27.14 Waiver

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

27.15 Successors and assigns

This lease is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

27.16 Rights cumulative

Each right provided for in this lease:

- (a) operates independently of any other right provided for in this lease; and
- (b) is cumulative with, and does not exclude or limit, any other right, whether at Law or pursuant to any other agreement, deed or document.

27.17 Disclosure

- (a) Despite any confidentiality or intellectual property right subsisting in this lease, a party may publish all or any part of this lease without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cth).

27.18 Determination

Where a party is required or entitled to form or hold an opinion or view under or in relation to this lease, that opinion or view may be formed or held by an Authorised Officer for that party. This clause does not limit any other way in which a party may otherwise form or hold an opinion or view under or in relation to this lease.

27.19 Consent and approvals

- (a) This clause applies to any consent or approval which a party must obtain from another party in accordance with this lease. For the avoidance of doubt, this clause does not apply to any consent or approval to be given under any legislation.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of this lease is not effective unless given in writing.
- (d) Except as otherwise stated, a party whose consent or approval is required must not unreasonably withhold or delay that consent or approval.
- (e) A consent or approval may be given subject to reasonable conditions.
- (f) A party receiving a consent or approval must comply with any conditions subject to which the consent or approval is given. To the extent that the party receiving the consent or approval fails to comply with the condition, that failure is taken to be a breach of this lease.

27.20 Doctrine of merger

The doctrine or principle of merger does not apply to this lease or to anything done under or in connection with this lease. Accordingly, no right or obligation of a party is merged in any thing done pursuant to this lease.

27.21 Civil Liability Act 2002 (Tas)

The parties agree that:

- (a) Part 9A of the *Civil Liability Act 2002* (Tas) does not apply; and
- (b) the rights, obligations and liabilities (whether such rights, obligations or liabilities are sought to be enforced as a claim in contract, in tort or otherwise) of the parties in connection with this lease are those that would exist if Part 9A of the *Civil Liability Act 2002* (Tas) did not apply.

27.22 Minister or State of Tasmania expressed to be party

- (a) If a Minister of the Crown (acting in that capacity) is expressed to be a party to this lease, then unless an applicable Law provides otherwise:
 - (i) the Minister enters into this lease on behalf of the Crown;
 - (ii) the Rights, obligations and liabilities expressed to be those of the Minister are Rights, obligations and liabilities of the Crown; and
 - (iii) each reference in this lease to the Minister will be taken to include a reference to the Crown.

- (b) For the avoidance of doubt, if the State of Tasmania is expressed to be a party to this lease, the Rights, obligations and liabilities of the State of Tasmania are Rights, obligations and liabilities of the Crown.

27.23 No interference with executive duties or powers

Nothing in this lease is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this lease that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

27.24 Surviving provisions and termination

- (a) The termination of this lease does not affect or limit the operation or effect of clauses or parts of this lease:
 - (i) that are expressed to survive the termination of this lease;
 - (ii) that, at Law, survive the termination of this lease; or
 - (iii) that are necessary to survive the termination of this lease:
 - (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of this lease;
 - (B) to enable a party to make, enforce or defend any claims related to this lease; or
 - (C) to give full force and effect to the operation of clause 27.24(b) or clause 27.24(c).
- (b) The termination of this lease does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, this lease before the date on which this lease is terminated.
- (c) Nothing in this clause 27.24 affects or limits the operation of another provision of this lease which gives a party Rights, or imposes obligations on a party, on or after the termination of this lease.

Signing page

Signed as an agreement

Execution by Tenant

Executed as a deed by **The Honourable Jeremy Page Rockliff MP** (being and as the Minister for Education and Training in the presence of the witness named below:

Minister's
signature:

→

Witness'
signature:

→

*Witness
print
name and
position:

*Use BLOCK LETTERS

*Witness
print address:

Signing by Landlord

The common seal of **Devonport City Council** was hereunto affixed in accordance with a resolution of the Council in the presence of:

Witness
signature:

→

*Print
name and
office held:

*Print
address:

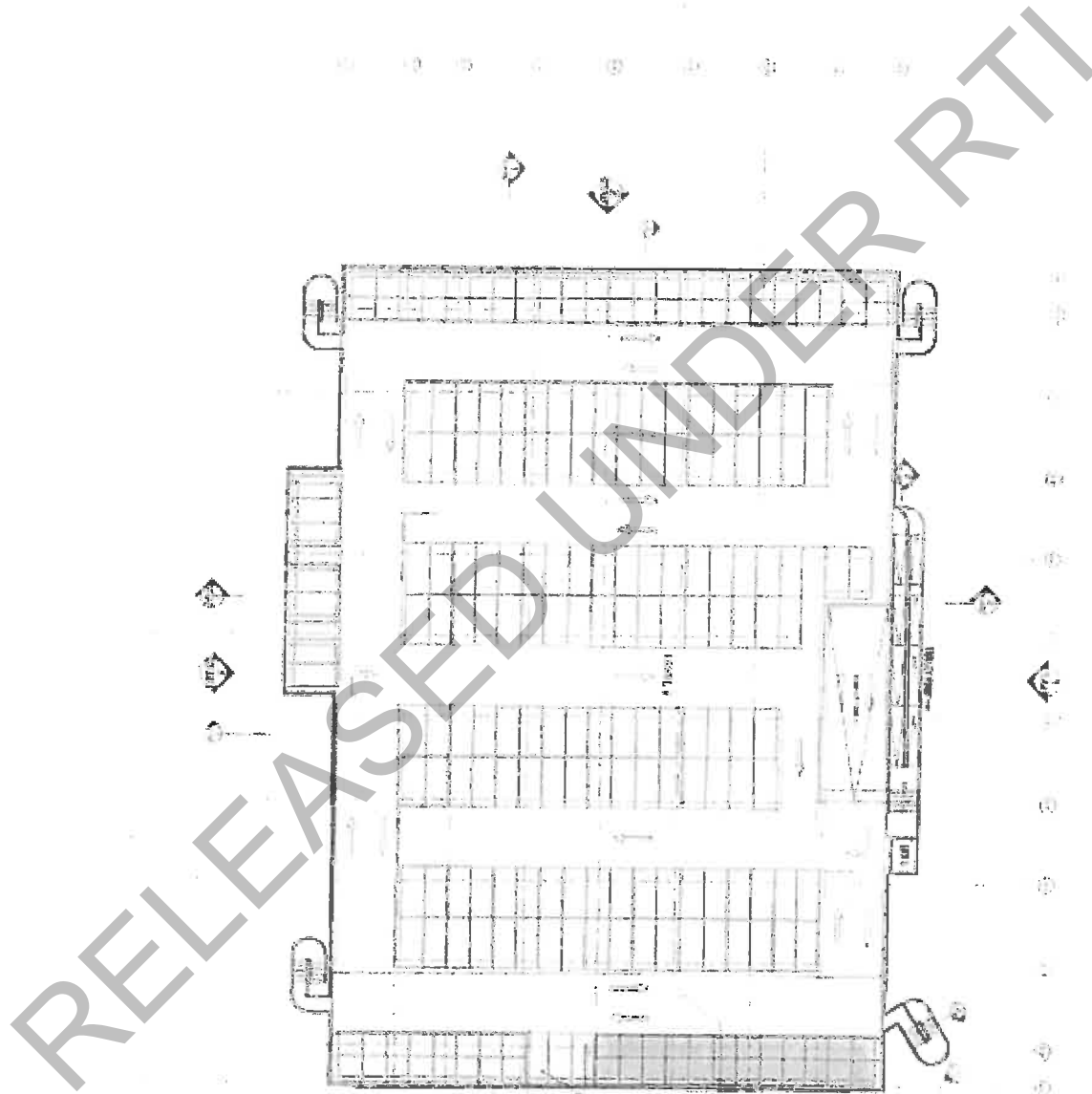
Seal:

→

*Use BLOCK LETTERS

Attachment 1 Plan

[Draft only for indicative purposes - final plan to be inserted at commencement]



Lyons

Developed Living City Stage 1
Concert Option
04.03.16

LINE BRIDGE INS
CLOSEST TO STAIRS
AND LIFT.
CONCRETE SPOTS
ASO ON THIS LEVEL.

Attachment 6: Plan of Crown Land

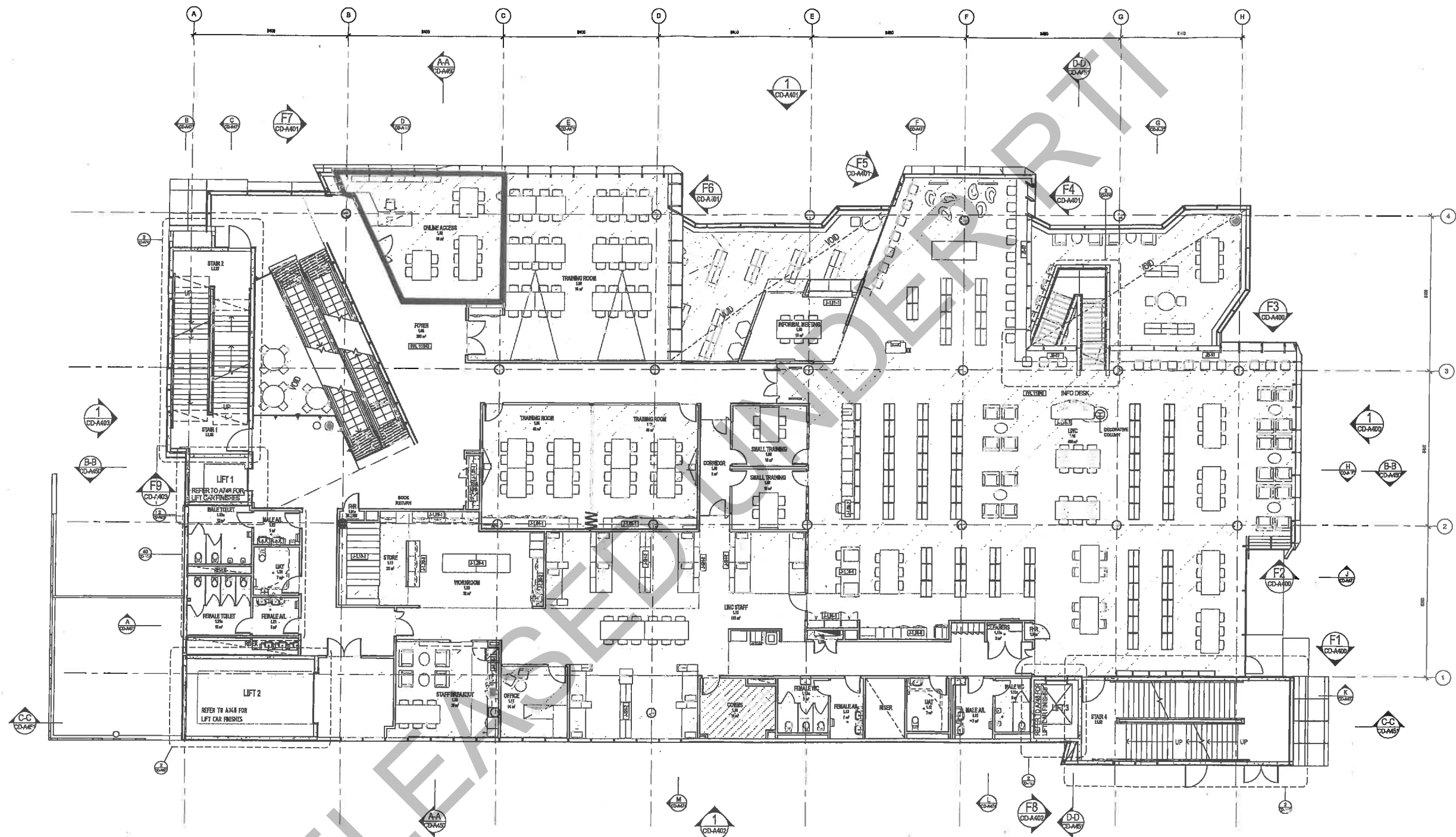
RELEASED UNDER RTI



www.thelist.tas.gov.au

Attachment 7: Plan of DOE Premises

RELEASED UNDER RTI



PLEASE NOTE:
REFER F&E SCHEDULE FOR LOOSE FURNITURE TYPES AND QUANTITIES
Jth REFER JOINERY CODE IN T-SHEET

CLIENT
DEVONPORT
17 Fenton Way
Devonport, TAS, 7310
T (03) 924 6511

DEVELOPMENT MANAGER
P+i
151 Macquarie Drive
Sydney, NSW, 2000
T (02) 9775 1100

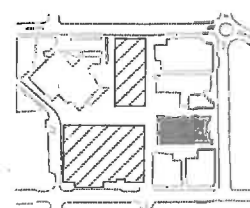
CONTRACTOR
Fairbrother
C/- Sandy Bay Road
Bridport, TAS, 7250
T (03) 6220 8630

SERVICES, ESD & FACADE
AECOM
Level 10, 727 Collins Street
Melbourne, VIC, 3008
T (03) 9655 1234

LANDSCAPE ARCHITECT
ASPECT STUDIOS
Level 1, 35-47 Erney Street
Cairns, QLD, 4870
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STRUCTURAL
GANDY & ROBERTS
155 Denby Rd
Melbourne, VIC, 3000
T (03) 8771 8877

CIVIL ENGINEERING, TRAFFIC & BUILDING SURVEYOR
PITT & SHERRY
100 Oliver Street
Devonport, TAS, 7310
T (03) 9412 1841



REV.	DETAILS	DATE
0	CLOTHING AND ROOMING SPECIFIC	16-11-14
1	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
2	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
3	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
4	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
5	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
6	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
7	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
8	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
9	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
10	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
11	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14
12	REVIEW FOR CONSTRUCTION - INTERNAL FITOUT (EXCLUDING JOINERY & FLOORING)	16-11-14

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Lyons
maddison
birrelli

PROJECT
DEVONPORT LIVING CITY -
STAGE 1
DRAWING TITLE
MULTI-PURPOSE BUILDING -
LEVEL 01 FLOOR PLAN

CONSTRUCTION
DOCUMENTATION
ISSUE FOR CONSTRUCTION
SCALE
1:100 @B1
DATE
14.11.16
REVISION
D

JOB No. **DRAWN** **CHECKED**
DL02 CH NB
DRAWING No.
CD-A301