



## **B02a PROFESSIONAL SERVICES AGREEMENT**

(the 'Contract')

Draft No.1

Date:

**ST HILLIERS PROPERTY PTY LIMITED (ABN 66 082 729 039) IN ITS OWN RIGHT AND AS AGENT  
FOR SH GOSFORD RESIDENTIAL PTY LTD (ABN 52 590 834 109) ('St Hilliers')**

and

**DKO Architecture NSW Pty Ltd as trustee for DKO Architecture (NSW) Unit Trust (ABN 81 956 706  
590)**

(the 'Consultant')

St Hilliers Standard Professional Services Agreement - updated 9/07/2020 & 25/11/2020

A handwritten signature or set of initials in black ink, located in the bottom right corner of the page.

KEY TERMS	
<b>JOB NO.:</b> D17-084	<b>PROJECT NAME</b> Gosford North Tower <b>ADDRESS:</b> 26 Mann Street Gosford
<b>HEAD CONTRACT PRINCIPAL:</b> TBA	
<b>DESCRIPTION OF SERVICES PROVIDED:</b> Architect	
<b>PARTIES:</b>	
<p>(1) <b>ST HILLIERS PROPERTY PTY LIMITED (ABN 66 082 729 039) IN ITS OWN RIGHT AND AS AGENT FOR SH GOSFORD RESIDENTIAL PTY LTD (ABN 52 590 834 109) ('St Hilliers')</b></p> <p><b>Registered Office:</b> Ground Floor, 8 Windmill St, Millers Point, NSW 2000 Ph: 02 9259 5200 Fax 02 9259 5201 and <b>Queensland office:</b> Level 9, 333 Ann Street Brisbane 4000 Ph: 07 3212 6300 ('St Hilliers')</p> <p><b>St Hilliers Design Manager:</b> Frank Katsanevas <b>Mob:</b> 0413 124 243 <b>Email:</b> fkatsanevas@sthilliers.com.au</p>	<p>(2) <b>The Trustee for DKO ARCHITECTURE (NSW) Unit Trust (ABN 81 956 706 590)</b></p> <p><b>Registered Office:</b> 42 Davies Street Surry Hills NSW <b>Street Address:</b> 42 Davies Street Surry Hills NSW ('Consultant')</p> <p>Note: the name must be of a legal entity (person, company, partnership or trustee of a trading trust). A business name or trading name is not sufficient.</p> <p><b>Consultant's Rep:</b> Nicholas Byrne <b>Mob:</b> 0419 350 823 <b>Email:</b> <a href="mailto:nick.byrne@dko.com.au">nick.byrne@dko.com.au</a></p>
<b>CONTRACT DOCUMENTS</b>	
The Consultant's Services shall be carried out in accordance with the Contract Documents.	
<p>1) Principal Terms and Conditions</p> <p>2) Schedule A (The Brief)</p> <p>3) Schedule B (Services)</p> <p>4) Schedule C (Special Conditions)</p> <p>5) Schedule D (Fees and Rates)</p> <p>6) Schedule E (Contract Design Program)</p> <p>7) Schedule F (Design Control Plan)</p> <p>8) Schedule G (Consultant's Declarations)</p>	<p>9) Schedule H (Checklist Re Building Code 2016)</p> <p>10) Schedule J (Secondary Consultant's Deed Poll)</p> <p>11) Schedule K (Payment to Secondary Consultants and staff)</p> <p>12) Schedule L (Method of Lodgement etc for Payment Claims)</p> <p>13) Schedule M (Inspection Certificate)</p> <p>14) Schedule N (Design Certificate)</p> <p>15) Schedule O (Deeds of Novation)</p> <p>16) Schedule P (Moral Rights Deed)</p>
<b>CONTRACT FEE::</b> FIXED PRICE CONTRACT \$1,066,900 plus GST	<b>PAYMENT CLAIM DATE:</b> By 25th day of each Month or any later date which applies by law.
<b>COMMENCEMENT DATE:*</b> 1 October 2020	<b>ANTICIPATED COMPLETION DATE*:</b> 31 December 2024
<p>*(subject to Schedules D and E if there are Separate Stages and subject to change as notified by St Hilliers)</p>	<b>PUBLIC LIABILITY INSURANCE:</b> not less than: \$20 million
<b>OWNERSHIP OF DESIGN INTELLECTUAL PROPERTY:</b> (if not completed, IP ownership remains with St Hilliers - see clause 11) <input checked="" type="checkbox"/> St Hilliers or <input type="checkbox"/> Consultant	<b>PROFESSIONAL INDEMNITY INSURANCE:</b> not less than:\$20 million* See Form B02 Consultant Professional Indemnity Matrix for values
<b>JURISDICTION:</b> the State or Territory where the Site is located. – NSW	
<b>EXECUTED AS A DEED</b>	
<p><b>SIGNED FOR SH GOSFORD RESIDENTIAL PTY LTD:</b></p> <p>(Sgd) _____ Date: _____ Name: _____</p> <p><b>Joseph Cummings</b> <b>Attorney under PA made 19.2.20</b></p>	<p>I confirm the Consultant is registered for GST and is not acting as a trustee: <b>SIGNED FOR CONSULTANT:</b></p> <p>(Sgd) _____ Date: _____ Name: Nicholas Byrne Position: Director</p> <p>02.12.2020</p>

**SOME IMPORTANT THINGS YOU NEED TO KNOW*****WARNING: THIS PAGE IS FOR GUIDANCE ONLY AND DOES NOT FORM PART OF THE CONTRACT***

Some of the requirements in this Contract result from obligations on St Hilliers under our contract (the Head Contract) with the Head Contract Principal. This means that for this Project:

- [Delete if not applicable - ] Special warranties are required from: [insert]
- [Delete if not applicable - ] All our Consultants must execute a Deed as per Schedule [ ]
- State nature of any other Head Contract requirements of which the Consultant should be aware

***IMPORTANT DATES UNDER THE HEAD CONTRACT:***

[Are there any milestone dates for fit out or similar that need to be flagged?]

***IMPORTANT LOCAL REQUIREMENTS:***

If this Contract relates to a project in Queensland, some of the requirements in this Contract will also result from obligations on St Hilliers and its subcontractors /consultants under the Queensland Code of Practice for the Building and Construction Industry

***Budget and Cost Control Warning:***

It is vital to the Project that your Services, including any Design Documentation, are provided on time and within budget. Material changes, lack of cost control, failing to keep to time and failing to keep to budget can result in loss and damage to St Hilliers for a variety of reasons, including by holding up other work.

<b>What you need to give St Hilliers before final execution of this Agreement</b>	
<b>Document</b>	<b>Date Received</b>
Certificate of Currency for your Public liability insurance	
Certificate of Currency for your Professional Indemnity insurance	

These are not the only important requirements in the Contract – this page only provides highlights for your assistance and is not part of the Contract. You should read and understand the whole Contract.

Contact St Hilliers if you have any questions.



**IMPORTANT INFORMATION FOR CONSULTANTS**

The Queensland Building Industry Fairness (Security of Payment) Act 2017 provides for security of payment and timely payments for subcontractors in the building and construction industry, replacing the:

- Building and Construction Industry Payments Act 2004 , and
- Subcontractors' Charges Act 1974

Further information, including commencement, can be accessed on:

- the Queensland Building and Construction Commission website at <https://www.qbcc.qld.gov.au/security-payment/security-payment>
- the Department of Housing and Public Works website at <http://www.hpw.qld.gov.au/construction/buildingplumbing/building/securityofpayment/Pages/SecurityPaymentSubcontractors.aspx>



## TABLE OF CONTENTS

**CONTRACT DOCUMENTS:****PRINCIPAL TERMS AND CONDITIONS**

1.	DEFINITIONS AND INTERPRETATION	43.	GOVERNMENT PROCUREMENT (SECURE LOCAL JOBS) CODE 2019
2.	APPOINTMENT AND COMMENCEMENT	44.	NSW CODE AND NSW GUIDELINES
3.	AGREEMENT AND DOCUMENTS		Schedule A (The Brief)
3A	CONTRACT FEE		Schedule B (Services)
4.	CONDITIONS		Schedule C (Special Conditions)
5.	CONSULTANT DESIGN		Schedule D (Fees and Expenses)
5A	QUALITY		Schedule E (Contract Design Program)
6.	DIRECTIONS, INFORMATION AND MATERIALS		Schedule F (Design Control Plan)
7.	REPRESENTATIVES		Schedule G (Consultant's Declarations)
8.	ASSIGNMENT, NOVATION, SUBCONTRACTING		Schedule H (Checklist Re Building Code 2016)
9.	THE SITE		Schedule J (Secondary Consultant's Deed Poll)
10.	CONFIDENTIALITY		Schedule K (Payment to Secondary Consultants and staff)
11.	INTELLECTUAL PROPERTY AND MORAL RIGHTS		Schedule L (Method of Lodgement etc for Payment Claims)
12.	LEGISLATIVE REQUIREMENTS		Schedule M (Inspection Certificate)
12A	BUILDING CODE 2016		Schedule N (Design Certificate)
13.	BASIS OF CONTRACTUAL RELATIONSHIP		Schedule O (Deeds of Novation)
14.	LIABILITY OF CONSULTANT AND INDEMNITY		Schedule P (Moral Rights Deed)
15.	INSURANCE		
16.	PROGRESS AND COMPLETION		
17.	VARIATIONS		
17A	PAYMENT TO STAFF AND SECONDARY CONSULTANTS		
18.	PAYMENT		
19.	GST		
20.	CONSEQUENCES OF EVENT OF DEFAULT		
21.	TERMINATION		
22.	SUSPENSION		
23.	CONSEQUENCES OF TERMINATION		
24.	DISPUTES		
25.	COMMUNICATIONS		
26.	CIVIL AND PROPORTIONATE LIABILITY		
27.	TIME LIMIT ON CLAIMS		
28.	AMENDMENTS		
29.	MISCELLANEOUS		
30.	SEVERABILITY		
31.	FURTHER ASSURANCES		
32.	SPECIAL CONDITIONS QUEENSLAND		
33.	CAPACITY		
34.	PPS		
35.	REPORTING OBLIGATIONS FOLLOWING ADJUDICATION		
36.	PRIVACY		
37.	EQUAL OPPORTUNITY		
38.	WORK HEALTH AND SAFETY		
39.	CHOICE OF LAW		
40.	POLICIES APPLICABLE TO SITE		
41.	SECURITY OF PAYMENT REQUIREMENTS		
42.	PROJECT BANK ACCOUNTS		



**PRINCIPAL TERMS AND CONDITIONS**

St Hilliers wishes to engage the Consultant to perform the Services in relation to the Project on the terms and conditions set out in this Contract.

**1 DEFINITIONS AND INTERPRETATION****1.1 Definitions**

Terms used in the Key Terms and not defined below will have the same meaning in the rest of the Contract and other terms shall have their dictionary meaning except where defined below or where the context indicates otherwise.

**"ABC Commissioner"** means the Australian Building and Construction Commissioner.

**"ABCC"** means the Australian Building and Construction Commission.

**"Anticipated Completion Date"** means the date in the Key Terms.

**"Authority"** means any Commonwealth, State or local government department, body or instrumentality; or any other public authority or statutory body which has jurisdiction over or in any way governs, regulates, controls or affects any aspect of the Services.

**"Beneficiaries"** means St Hilliers and the Head Contract Principal.

**"Beneficiary Group"** means the Beneficiaries, their employees and contractors and (where the Head Contract Principal is a government body, authority or instrumentality) all other agents of the Crown in right of the Commonwealth.

**"Brief"** means the St Hilliers' brief or instructions in relation to the Services, as stated in the documents listed or contained in Schedules A and B (which, for the sake of clarity, may be or incorporate the Head Contract Principal's brief to St Hilliers); including technical requirements and any finishes schedules, as those documents may be revised, amended, developed and added to from time to time through the design process.

**"Business Day"** means, to the extent that the Works are carried out in:

- a) New South Wales or Western Australia - days other than:
  - i. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
  - ii. a public holiday in the State in which the Site is situated;
- b) Victoria - days other than:
  - iii. a Saturday or Sunday; or
  - iv. a day that is partly or wholly observed as a public holiday throughout Victoria;
- c) Northern Territory - days other than:
  - v. a Saturday or Sunday; or
  - vi. a public holiday in the Northern Territory;
- d) South Australia - days other than:
  - vii. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December;
  - viii. a public holiday in the State of South Australia; or
  - ix. any other day on which there is a State-wide shutdown of the operations of the building and construction industry;
- e) Tasmania - days other than:
  - x. a Saturday or Sunday; or
  - xi. a statutory holiday as defined in the *Statutory Holidays Act 2000* (Tas);
- f) Australian Capital Territory - days other than:
  - xii. a Saturday or Sunday or the 27th, 28th, 29th, 30th or 31st day of December; or
  - xiii. a public or bank holiday in the Australian Capital Territory under the *Holidays Act 1958* (ACT); or
- g) Queensland - a business day as that term is defined in section 36 of the *Acts Interpretation Act 1954* (Qld).

**"CCU"** means the Construction Compliance Unit

**"Claim"** means any allegation, demand, claim, action, suit or proceeding of any kind made pursuant to or in connection with this Contract or its subject matter including for any monies, for any adjustment to the Contract Sum or for any extension of the Completion Date or for Variations, payments, or Liabilities on any basis whatsoever including, without limitation, any claim in contract (including under any acknowledgement, agreement, certification, warranty or indemnity or any other breach, actual or anticipatory), in restitution, in tort (including negligence), strict liability, under statute, on a quantum meruit, pursuant to quasi contract, for unjust enrichment, or pursuant to any other principle of law or equity.

**"Code"** or **"Building Code 2016"** means the Code for the Tendering and Performance of Building Work 2016 made pursuant to the Building and Construction Industry (Improving Productivity) Act 2016 and any applicable State or Territory building code, to the extent they are not inconsistent with the Code. References to the Code also include the Building Code 2013 and the National Code of Practice for the Construction Industry, to the extent relevant.

**"Commencement Date"** means the earlier of the date on which the Consultant commences the Services, the date this Contract is signed by both parties or any later date agreed by them in writing, provided that where St Hilliers creates one or more Separate Stages, references to the Commencement Date shall be read as references to the different commencement dates which relate to each Separate Stage.

**"Completion Date"** means the date on which the Services are to be completed, as contemplated in the Contract Design Program if applicable (as it may be adjusted by St Hilliers from time to time) and "Completion" means the date on which the Services are satisfactorily completed.

**"Confidential Information"** has the meaning in clause 10.



**"Contract Design Program"** means the program supplied by St Hilliers set out in Schedule E, which may be revised by St Hilliers on reasonable notice from time to time.

**"Consultant's Materials"** means the plans, designs, documents and other materials (in whatever form produced, or provided, or required to be provided, to St Hilliers, under, for the purposes of or in connection with, or created under this Contract for St Hilliers as part of the Services including, where appropriate, Design Documents, shop drawings and all material at any time derived from, or based on, the material described above.

**"Consultant's Rep"** means the person referred to as such in the Key Terms, or any replacement from time to time who meets the requirements of clause 7.

**"Contract"** means this agreement between the parties executed as a deed and includes any novation of this Contract.

**"Contract Documents"** means the documents listed in the Key Terms.

**"Contract Fee" or "Fee" or "Contract Sum"** means, where the parties have agreed:

- a) on a fixed price for any part of the Services, the amount referred to as such in the Key Terms or Schedule D; and/or
- b) to pay for any part of the Services according to hourly rates as set out in Schedule D, the total fees payable on that basis;

in either case, as varied under this Contract.

**"Day or Days"** means, calendar days.

**"Defect"** means, an error, poor sources or documents, omission, shrinkage, blemish in appearance or gap in the design documentation any other fault in the documents or which affects the Works, resulting from a failure of the Consultant to comply with the Contract, relevant standards, brief or other. **"Defects Liability Period"** means the period commencing on the Date of Substantial Completion and ending 18 months later, or any extended period in relation to a specific defect which applies pursuant to clause 14, unless the Home Building Act 1989 is applicable to the Project then a period of 26 months from Substantial Completion will apply.

**"Design Control Plan"** means the plan set out in Schedule F and any associated budget, which may be revised by St Hilliers on reasonable notice from time to time.

**"Design Documents"** means detailed documentation design for the construction of the Works provided by the Consultant as required by St Hilliers including shop drawings, specifications, samples, models, technical information, calculations, patterns and the like.

**"Design Obligations"** means the design of the Works where undertaken by or on behalf of the Consultant including the Preliminary Design and Design Documents.

**"Direction"** includes agreement, approval, assessment, authorisation, certificate, decision, demand determination, explanation, instruction, notice, order, permission, rejection, request or requirement and may relate to anything in connection with the Services and this Contract.

**"Environment"** has the meaning given to that term at common law and under any Environmental Law and includes any land, water, atmosphere, climate, sound, odour, taste, the biological factor of animals and plants and the social factor of aesthetics and "Environmental" has the same meaning.

**"Environmental Law"** means any Legislative Requirement regulating or otherwise relating to the Environment.

**"Event of Default"** means where the Consultant breaches a term of this Contract, including where it fails to carry out or complete the Services to a satisfactory standard or in a satisfactory manner (including as to time). Breaches include, but are not limited to:

- a) failing to:
  - i. perform properly the Consultant's design obligations;
  - ii. provide security (if required);
  - iii. provide evidence of insurance;
  - iv. comply with a Direction of St Hilliers;
  - v. use the standards of work required by this Contract;
  - vi. remedy defects;
  - vii. supply services by the time or times agreed;
  - viii. satisfy the requirements of the WHS Laws;
  - ix. ensure a safe place of work;
- b) wrongful suspension of Services;
- c) substantial departure from the project program without reasonable cause or St Hilliers' approval;
- d) failing to proceed with due expedition and without delay;
- e) disruption to the Services, for example through failure to pay Secondary Consultants or employees on time;
- f) committing a modern slavery offence or breaching any term of this Contract (other than in a minor or technical sense) in relation to modern slavery; or
- g) knowingly providing documentary evidence containing an untrue statement.

**"Fee"** means, where the parties have agreed:

- a) on a fixed price for any part of the Services, the amount referred to as such in the Key Terms or Schedule D; and/or
- b) to pay for any part of the Services according to hourly rates as set out in Schedule D, the total fees payable on that basis;

in either case, as varied under this Contract.

**"Fit for Purpose" or "Fit for their intended purpose"** means suitable for the intended purpose stated in the Brief or this Contract and meeting the purposes, functions, requirements, quality and performance standards described in, or reasonably ascertainable from, this Contract.



**"Guidelines"** means (1) any guidelines from time to time relating to the Building Code 2016, (2) where applicable the Building Code 2016 Supporting Guidelines for Commonwealth Funding Entities and (3) the guidelines relating to any applicable State or Territory building code (to the extent they are not inconsistent with the Building Code 2016 or the Building Code 2013), as the case maybe.

**"Head Contract"** means the contract between St Hilliers and the Head Contract Principal relating to the Project on the Site.

**"Head Contract Principal"** or **"Principal"** means the party identified as such in the Key Terms and its assigns.

**"Insolvent"** means when a party:

- a) is an individual person or partnership who:
  - i. informs the other, or creditors generally, that it is insolvent or financially unable to carry out its obligations under this Contract;
  - ii. has execution levied against them by a creditor;
  - iii.
  - iv. is made bankrupt;
  - v. has a bankruptcy petition presented against them;
  - vi. presents their own bankruptcy petition;
  - vii. makes a proposal for a scheme or arrangement or a composition;
  - viii. has a deed of assignment or arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made under bankruptcy legislation;
- b) is a corporation and is not (or its directors are not) protected by 'safe harbour' provisions of the Corporations Act and the corporation:
  - i. enters into a deed of company arrangement with creditors;
  - ii. has a liquidator, provisional liquidator, controller, receiver, manager or administrator appointed to it or any part of its property;
  - iii. has a winding up order made against it;
  - iv. resolves by special resolution to be wound up voluntarily;
  - v. a mortgagee takes possession of any of its property;
  - vi. an application is made to a court for its winding up which is not stayed within 10 Business Days;
  - vii. notice is given of a meeting of its creditors to propose it entering into a deed of company arrangement;

**"Intellectual Property Right"** means any patent, registered design, trademark or name, copyright or other protected right or entitlement, whether protectable by Legislative Requirement, at common law or in equity, to use, modify, protect, assign, licence and otherwise deal with intellectual property.

**"Jurisdiction"** means the jurisdiction identified in the Contract Key Terms.

**"Legislative Requirement"** includes in relation to each or both of St Hilliers and the Consultant, as the context indicates:

- a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and of the jurisdiction where the Services are being carried out;
- b) certificates, licenses, consents, permits, approvals and requirements from time to time of organisations having jurisdiction where the Services or the particular part thereof is being carried out; and
- c) fees and charges payable in connection with the foregoing.
- d) the National Construction Code and Australian Standards to the extent applicable to the Site or Services;

any government guidelines or procurement requirements for the State or Territory in which the Services are carried out;

including all changes thereto prior to Completion.

**"Liabilities"** includes all liabilities, losses, damages, costs (including without limitation legal costs), expenses, proceedings, payments and demands.

**"Migration Act"** means the Migration Act 1958 (Cth).

**"modern slavery"** includes:

- a) any conduct constituting a modern slavery offence under Australian legislation that applies to St Hilliers and/or the Consultant, and
- b) the use of any form of slavery, servitude or forced labour to exploit children or adults;

**"modern slavery offence"** includes debt bondage, forced labour or similar in breach of the Commonwealth Crimes Act or Criminal Code or in breach of any relevant State or Territory legislation or which is committed elsewhere than in Australia but would be in breach if it had been committed in the relevant jurisdiction;

**"NSW Code"** means the NSW Code and New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines).

**"NSW Design and Building Practitioners Act 2020"** For this ACT the following now apply, Extended duty of care, Regulated designs, Registration, Design compliance declarations, Building compliance declarations, Variations to the design, Occupation certificates and other building certificates, Stop work orders, Indemnification and Insurance.

**"Payment Claim"** means the document created by the Consultant as described in clause 18.1.

**"Payment Schedule"** means the document created by St Hilliers as described in clause 18.5.

**"PPSA"** means the *Personal Property Securities Act 2009* (Cth).

**"Preliminary Design"** means the design for the Head Contract Principal's Project requirements as referred to in Schedule A or B.





**"Preliminary Estimate"** means any indicative cost estimate for that part of the Project as is represented by the Services.

**"Principal's Project Requirements"** means any document of that name included in Schedule A.

**"Project"** means the project described in the Key Terms relating to the Site.

**"Project Bank Accounts"** means any project where this Project Bank Accounts is applicable as defined by the Building Industry Fairness (Security of Payment) Act 2017

**"Project Manager"** means the individual described in the Key Terms who shall, for the purposes of the Contract, at all times be the agent of St Hilliers and not obliged to act independently.

**"Proportionate Liability Legislation"** means whichever of the following is applicable to the Jurisdiction:

- a) Part 4, Civil Liability Act 2002 (NSW);
- b) Part 2, Civil Liability Act 2003 (Qld);
- c) Chapter 7A, Civil Law (Wrongs) Act 2002 (ACT) and s141, Building Act 2004 (ACT);
- d) Part IVAA, Wrongs Act 1958 (Vic);
- e) Part 1F, Civil Liability Act 2002 (WA);
- f) Proportionate Liability Act 2005 (NT);
- g) Part 9A, Civil Liability Act 2002 (Tas) and s252 Building Act 2000 (Tas);
- h) Pt 3, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) and s72, Development Act 1993 (SA);
- i) Part VIA, Competition and Consumer Act 2010(Cth); and
- j) Part 2, Division 2, Subdivision GA, Australian Securities & Investments Commission Act 2001 (Cth);
- k) Part 7.10 Division 2A, Corporations Act 2001 (Cth);

**"QBCC Act"** means the Queensland Building and Construction Commission Act 1991 (Qld).

**"Quality Assurance System"** has the meaning given to that term in clause 4.2 (n).

**"Relevant Date"** means the date specified in clause 20.2.

**"Representative"** includes an employee, agent, officer, director, auditor, adviser, partner, subcontractor or joint venturer.

**"Resolution Institute"** ABN 69 008 651 232 is a public company limited by guarantee which acts as an Authorised Nominating Authority (ANA) for building and construction security of payment disputes in several States and as the administrator of IAMA which is an ANA in other States and Territories.

**"Schedule of Rates"** means any schedule of rates included in Schedule D. Quantities in a schedule of rates are estimated quantities only and shall not be used to define the scope of the Services. St Hilliers is not required to give a direction by reason of the actual quantity of an item required to perform the Contract being greater or less than the quantity shown in the schedule of rates.

**"Secondary Contract"** means a contract with a Secondary Consultant.

**"Secondary Consultant"** means a person, firm or entity to whom any part of the Services are subcontracted by the Consultant and includes any agent, employee, subcontractor or consultant of the Consultant or of any of those persons.

**"Secondary Consultant's Deed Poll"** means a deed poll to be entered into by each Secondary Consultant, substantially in the terms of the deed set out in Schedule J or in such terms as are otherwise required by St Hilliers or the Head Contract Principal.

**"Security of Payment Legislation"** means (as applicable):

- a) Building and Construction Industry Security of Payment Act 1999 (NSW);
- b) Contractors Debts Act 1997 (NSW);
- c) whichever of the Building Industry Fairness (Security of Payment) Act 2017(Qld) and the Building and Construction Industry Payments Act 2004 (Qld), is applicable at the time in question;
- d) QBCC Act;
- e) Subcontractors' Charges Act 1974 (Qld).
- f) Building and Construction Industry Security of Payment Act 2009 (SA);
- g) Worker's Liens Act 1893 (SA);
- h) Building and Construction Industry Security of Payment Act 2009 (Tas);
- i) Building and Construction Industry Security of Payment Act 2002 (Vic);
- j) Construction Contracts Act 2004 (WA);
- k) Building and Construction Industry (Security of Payment) Act 2009 (ACT); and
- l) Construction Contracts (Security of Payment) Act (NT).

**"Separate Stage"** or "Separable Portion" means a distinct part of Project, with a different Completion Date to the other parts of the Project, as notified in writing by St Hilliers to the Consultant from time to time, including but not limited to the stages identified in Schedule D or E.

**"Services"** means the activities described in Schedule B and such other activities as are necessary (whether expressly or by implication), or which should reasonably have been anticipated by an experienced and competent consultant in the same area of work or profession as being necessary, in order for the Consultant to properly complete the requirements of the Brief that relate to the Consultant's area of expertise, including but not limited to consequential or additional services and Variations, and all related and incidental activities, professional skill and advice provided that where St Hilliers creates one or more Separate Stages as described in Schedule D or E, references to the Services shall be read as applying separately to each Separate Stage.

**"Site"** means the site upon which the Project is being carried out including all areas above and below the Site surface.



**"St Hilliers"** means St Hilliers Property Pty Ltd and its assigns.

**"Submission"** means (in the context of The approved project software) delivery of project correspondence or documentation into or via the approved project software system.

**"Superintendent"** means the entity appointed as such under the Head Contract.

**"The approved project software"** means an electronic document management system accessible via the internet and used for the creation, sending and receiving of Project correspondence and documentation.

**"Termination Date"** means the date this Contract is terminated by agreement between the parties, or the date of expiry of any termination notice.

**"Third Party IPR Claim"** means an Intellectual Property Right Claim made by any third party not connected to St Hilliers or the Consultant.

**"Variation"** means any change in the Services, including but not limited to a material:

- a) increase, decrease or omission of any part of the Services;
- b) change in the levels, lines, positions or dimensions of any part of the Project to which the Services relate;
- c) change in the materials, character or quality of any part of the Project to which the Services relate or of the Design Documents; or
- d) carrying out any materially additional work.

**"WHS Act"** means the Work Health and Safety Act 2011 (Cth) and any corresponding WHS law (as defined in the WHS Act) within the meaning of section 4 of the WHS Act.

**"WHS Laws"** means the relevant work health and safety or occupational health and safety legislation that applies to the Consultant.

**"Works"** means the physical constructions on the Site relating to the Project.

## 1.2 Principles of Construction

In this Contract,

- a) the Consultant shall carry out its obligations having regard to such assumptions as the Consultant can reasonably be expected to make in accordance with sound professional practice in its area of expertise;
- b) any Directions from St Hilliers to the Consultant shall be given in good faith and shall be reasonable in the circumstances, taking into account any Head Contract requirements and any practical constraints upon the Consultant;
- c) the time frames for any action shall, where not otherwise specified, be reasonable in the circumstances;
- d) where approval from St Hilliers is required, the approval shall not be unreasonably withheld in the circumstances, taking into account any Head Contract requirements (such as the need for St Hilliers to first obtain approval from the Head Contract Principal or its Superintendent);
- e) where an action depends upon a party forming a view, that view shall be formed reasonably in the circumstances;
- f) where the Consultant elects to have part of the Services carried out by other persons or entities, this does not relieve the Consultant from responsibility for the satisfactory completion of the Services.

## 1.3 Interpretation

Without limiting the generality of the previous subclauses, in this Contract,

- a) references to design obligations and documents do not apply if the Services are for advice only or otherwise do not include design;
- b) "includes", "including", "for example" and similar expressions are not words of limitation and shall be construed as though followed by the words "(without limitation)";
- c) headings and tables of contents or indexes, capital letters and italics are for convenience and do not affect interpretation unless the context indicates otherwise;
- d) provisions shall not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Contract or the inclusion of a provision in this Contract;
- e) where an act is to be done on a day which is not a Business Day, it shall instead be done on the following Business Day;
- f) where any discrepancy or inconsistency involves figured dimensions and scaled dimensions then figured dimensions shall take precedence over scaled dimensions;
- g) drawings made to larger scales and those showing particular parts of the work shall take precedence over drawings made to smaller scales and those for more general purposes and drawings approved by an Authority shall take precedence over drawings not approved;
- h) subject to clauses 2 (Appointment and Commencement), 28 (Amendments) and clause 3.2 (pursuant to which St Hilliers may give the Consultant a Direction as to an issue of interpretation), where this Contract has come into effect and there is any inconsistency between the Principal Terms and Conditions of this Contract and either the Key Terms, or the provisions of any Schedule or Annexure, the documents shall apply in the following order:
  - i. first, Schedule C, then
  - ii. these Principal Terms and Conditions shall apply to the extent they are not inconsistent with Schedule C; then
  - iii. the Key Terms, to the extent they are not inconsistent with the above paragraphs; then
  - iv. Schedule A, to the extent it is not inconsistent with the above paragraphs (and the documents listed in Schedule A will apply in the order stated in that Schedule); then
  - v. Schedule B, to the extent it is not inconsistent with the above paragraphs; then
  - vi. Schedule E, to the extent it is not inconsistent with the above paragraphs; then



- vii. Schedule F, to the extent it is not inconsistent with the above paragraphs; then
  - viii. Schedule D, to the extent it is not inconsistent with the above paragraphs; then
  - ix. any other schedules or annexures, in the order listed in the Key Terms;
  - x. In the event that the order of precedence as provided above does not resolve the inconsistency, St Hilliers may give a Direction as to which of the provisions shall apply and the Consultant must comply with any Direction of St Hilliers to give effect to the interpretation and has no Claim in connection therewith.
- i) where there is any ambiguity or inconsistency between standards which are to apply, including standards of any Authority or Legislative Requirement, the Consultant shall satisfy the obligation that requires provision of the Services to the higher, more stringent or greater standard, requirement or scope.
  - j) references to legislation include references to that legislation as amended or replaced from time to time; and
  - k) where the Building Code 2016 applies to St Hilliers and/or to the Consultant, all references in this Contract to legislation, codes and guidelines and relevant bodies having authority thereunder shall apply only to the extent relevant (for example, in the context of whether a party has breached legislation or legislative instruments) and otherwise shall be read as references to the equivalent legislation, codes and guidelines which currently apply and to the relevant bodies which enforce that legislation and legislative instruments.

## **2 APPOINTMENT AND COMMENCEMENT**

- 2.1 St Hilliers appoints the Consultant to perform the Services in accordance with this Contract in consideration of the Fee and the Consultant accepts the appointment.
- 2.2 This Contract will not come into effect unless and until the Head Contract between St Hilliers and the Head Contract Principal is entered into.
- 2.3 If the Consultant commences the Services before the terms of this Contract are agreed between the parties (as evidenced by its execution by both parties), then when the terms are agreed, and the Contract executed by both parties, the final terms as agreed between the parties are deemed to have applied, subject to clause 2.2, from the date on which the Consultant commenced performing the Services.
- 2.4 Where there are a number of Separate Stages in relation to the Project, the Consultant shall not commence work in relation to any Stage other than the first Stage until Directed to do so by St Hilliers. If the Consultant acts in breach of this provision, it shall not be entitled to any Fee in respect of the unapproved work.

## **3 AGREEMENT AND DOCUMENTS**

- 3.1 This Contract, including the Documents, contains the entire, final and concluded agreement between the parties and supersedes and replaces all previous offers, agreements representations and warranties from any party (including St Hilliers) whether in the course of tender discussions or otherwise. Any terms or conditions embodied in or attached to the Consultant's quotation or tender and any offers, agreements, representations or warranties by either party, are deemed to be withdrawn in favour of the terms and conditions of this Contract and to have no further effect to the extent that they are inconsistent with this Contract.
- 3.2 The responsibility for the co-ordination of the Works, in conformity with the approved Design or Construction Programme, shall rest wholly and totally with and between all consultants and with and between design consultants and subcontractors. The Consultant shall therefore communicate and coordinate with other design consultants and subcontractors, throughout all stages of the Works, as is required to facilitate the delivery of the Consultant's Works and all other works packages forming the Project Works.
- 3.3 The Consultant must check the Contract Documents, at least 31 days before the Consultant proposes to use a Contract Document to develop the design or provide other services.
- 3.4 If the Consultant discovers an inconsistency, ambiguity, discrepancy, omission or error in or between different parts of this Contract (including any Contract Document and any document included in the Brief) or between this Contract and any document prepared for the purposes of carrying out the Services, it shall notify St Hilliers in writing at least 31 days before the Consultant proposes to use a Contract Document. Upon becoming aware of such an issue, St Hilliers may give a Direction to the Consultant as to the reasonable interpretation and construction to be followed in carrying out the Services and the Consultant must comply with such Direction.
  - a) where the ambiguity, discrepancy or inconsistency is between the Contract and any part of the Design Documentation or any other Project Document, the higher or more onerous standard, quality or quantum will prevail but if this does not resolve the ambiguity, discrepancy or inconsistency, the Subcontract will prevail;
  - b) to the extent that St Hilliers resolves the Fault by instructing a Variation, clause 17 applies; and
  - c) if the resolution has an effect on the time to achieve Substantial Completion, the Subcontractor may make a Claim for an Extension of Time under clause 16, or St Hilliers may assess a reduction of time in accordance with clause 14;
- 3.5 If St Hilliers resolves a fault in the Contract Documents that was not notified in accordance with clause 3.2 or where 3.3 a) applies, the Contract is not entitled to any time, additional costs or any aborted work.
- 3.6 St Hilliers may submit all documents contained within this Contract to the Consultant via The approved project software, including the signed version of this Contract.
- 3.7 Documents supplied by St Hilliers or the Head Contract Principal (the 'supplier') to the Consultant shall remain the property of the supplier and shall be returned by the Consultant to the supplier on demand in writing. The documents shall not, without the prior written approval of the supplier, be used, copied or reproduced for any purpose other than the execution of the work under the Contract.
- 3.8 The Head Contract Principal is entitled to view a copy of this Contract, without prices.



**3A CONTRACT FEE**

- 3A.1 The Contract Fee is not subject to rise and fall and not subject to increase except as expressly provided in this Contract or agreed by St Hilliers in writing.
- 3A.2 Notwithstanding any other provision of this Contract or any principle of law or equity, the Contract Fee is the limit of St Hilliers' liability to pay the Consultant for carrying out the Services (including where there has been any repudiation or termination of the Contract), and the Consultant agrees that it will have no Claim which exceeds the Contract Fee for the carrying out of the Services by the Consultant.
- 3A.3 The Consultant shall be deemed to have (and it hereby undertakes that it has):
- a) examined carefully and to have acquired actual knowledge of the contents of the documents which form the Contract and any other information made available by or on behalf of St Hilliers to the Consultant;
  - b) examined all information obtainable by the making of reasonable inquiries and relevant to the risks, contingencies and other circumstances having an effect on the carrying out of the work under the Contract;
  - c) satisfied itself that its price covers the cost of complying with all its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of this Contract.
  - d) Failure by the Consultant to do all or any of the things it is deemed to have done under this clause will not relieve the Consultant of its liability to perform and complete the Contract in accordance with its terms and conditions.
- 3A.4 The Consultant warrants to St Hilliers that the Consultant is able to complete all Services for no more than the Contract Fee. The Consultant acknowledges and agrees, to the extent permitted by law, that:
- e) it is fully aware of the nature and extent of the Services under the Contract;
  - f) it is aware of the resource levels required to execute the Services under the Contract in accordance with the Contract; and
  - g) it shall exert the fullest effort to execute the Services under the Contract accordingly and shall co-operate in all respects with St Hilliers in order to ensure that St Hilliers has conferred upon it the full benefit intended to be conferred by this Contract.
- 3A.5 The Contract Fee shall only be increased if there is a change to the Services directed by St Hilliers which is neither:
- h) disclosed or referred to in or to be inferred from this Contract or other information made available to the Consultant prior to the date of the Contract; nor
  - i) a change which could reasonably have been anticipated by a competent and experienced Consultant having regard to all information disclosed or referred to in this Contract or made available to the Consultant prior to the date of the Contract;

and which gives rise to a substantial change in the scope of the Services which could not reasonably have been contemplated as at the date of the Contract.

**4 CONDITIONS**

- 4.1 The Consultant hereby undertakes as at every Day from commencement of the Services until termination of this Contract, and it shall be an essential term of this Contract that:

**Changes, Budget and Cost Control**

- a) it will not vary the scope of the Services or any Design Documents without prior written Direction or written agreement of St Hilliers;
- b) It will at all times carry out the Services so as to meet the requirements of the Preliminary Estimate, or other budget or costing information provided by St Hilliers from time to time;
- c) If it believes at any time that the cost of its Services will exceed the Preliminary Estimate or other budget, it will promptly notify St Hilliers in writing and not proceed with the Services until so Directed;

**Previous services on the Project**

- d) if it has provided services to the Head Contract Principal under an earlier consulting agreement in relation to the Project, whether or not that agreement has been novated to St Hilliers, those services were Fit for Purpose, complied with all relevant codes, legislation, ordinances, regulations and Australian Standards and were otherwise carried out and discharged in accordance with the terms of that earlier consulting agreement;

**Standards and personnel**

- e) the Services (including any design and all Consultant Materials) shall be undertaken and performed or prepared, as the case may be:
    - i. by appropriately qualified and skilled persons;
    - ii. with the skill, care and diligence expected of persons acting in the Consultant's capacity or profession in Australia and possessing appropriate qualifications, knowledge, skill and experience;
    - iii. consistently with all Legislative requirements, relevant professional or industry standards, the Code, the Guidelines and certification quality as per ISO 9001 and the standards expected in Australia for projects in the nature of the Project;
    - iv. without delay and consistently with the Brief, the Contract Design Program, any Program required under 16.2 and the other provisions of this Contract;
- 4.2 The Consultant will:
- a) perform the Services including the Design Obligations so as to:
    - i. satisfy the scope of services as set out in Schedule B (which are deemed to include the Brief in Schedule A), including to accord with any relevant Principal's Project Requirements;

- ii. ensure that the requirements in the Brief are properly and fully complied with and (if relevant) reflected in the Design Documents;
- iii. (where relevant) co-ordinate, direct and control the completion of the Design Documents, and submit such number of copies to St Hilliers as may be required not later than 10 Business Days prior to their use for the Project;
- iv. When requested by St Hilliers provide a certificate which may be relied on also by the Head Contract Principal to the effect that, to the extent then applicable, all Design carried out by the Consultant complies with any applicable standards set out in the Head Contract (as notified to the Consultant);
- v. comply with:
  - A. this Contract and the Contract Documents;
  - B. all Legislative Requirements;
  - C. all relevant Quality Standards; and
  - D. the requirements of all relevant Authorities;with the higher standard, quantum or quality to apply in the event of a discrepancy.
- b) ensure that the design described in the Design Documents is fit for its intended purpose and will enable the Head Contract Principal to make full and proper use of the Works as intended; so that the Works, when completed, shall be Fit for Purpose, comply with all Legislative Requirements in relation to their construction, and comply with all requirements of this Contract;
- c) complete the Services including the Consultant's Materials to a standard whereby they are Fit for Purpose and free of defects;
- d) carry out and complete the Services strictly accordance with the Contract Documents. The Consultant shall not depart from the Design Documents in any respect without the prior written consent of St Hilliers. If the Consultant from time to time considers it necessary or desirable to vary the Design Documents in any way, the Consultant may by notice in writing to St Hilliers seek consent to vary the Design Documents. Any such notice shall give full particulars of the proposed variations and shall specify the proposed changes in the Design Documents. St Hilliers shall be under no obligation to consent to any variation of the Design Documents. If any such consent is given (whether to overcome an inconsistency, ambiguity, discrepancy, error, omission, fault or otherwise) the Consultant shall carry out the work relevant to the variation at its own cost and shall have no Claim against St Hilliers;
- e) prior to construction, issue to St Hilliers a certificate of design definition certifying that the design complies strictly with the requirements of this Contract ("Certificate of Design Definition");
- f) in relation to each Separate Stage provide a certificate for the benefit of St Hilliers, the Head Contract Principal, and their nominees certifying that:
  - i. the developed Design Documents for which the Consultant is responsible comply with:
    - A. this Contract and the Contract Documents, including any Development Consent;
    - B. the Construction Certificate;
    - C. all Legislative Requirements;
    - D. all relevant Australian Standards; and
    - E. the requirements of all Authorities;
  - ii. the construction of the relevant part of the Works has been inspected by the Consultant and the Consultant certifies that the relevant part of the Works have been installed or constructed in accordance with the relevant Design Documents;
  - iii. save for any minor defects identified in the certificate, there are no non-conformities in the relevant part of the Works;
- g) to the extent that the Consultant has any commissioning obligations in relation to the Services, that the Consultant has carried out all commissioning tests relevant to its designs and that the commissioning tests were successfully passed;
- h) if required by the Brief or requested by St Hilliers in writing, provide St Hilliers, the Head Contract Principal, and any financier of any of them, with monthly certifications (or as otherwise agreed with St Hilliers) as to the Project's compliance with the Consultant's Materials, in substantially the form set out in Schedule L or as otherwise reasonably required by the recipient, and
- i) undertake sufficient Site inspections to enable it to provide such certifications;
- j) if required by St Hilliers, provide a certificate in the form set out in Schedule N or as otherwise agreed with St Hilliers on Completion of the Project or any Stage;
- k) where any part of the Services is to be carried out by a Secondary Consultant, the Consultant will (i) include a requirement in its contracts with Secondary Consultants that the Secondary Consultant enters into an 'Secondary Consultant's Deed Poll' substantially to the effect of Schedule J before they commence any part of the Services, or will ensure that the Secondary Consultant carries out the obligations of the Consultant in relation to the part of the Services which are undertaken by that Secondary Consultant, and document the same appropriately, and (ii) notify St Hilliers immediately it becomes aware of any (proposed) action (including suspension of work) by or through such parties pursuant to security of payment or industry payments legislation;
- l) it will ensure that, subject to factors beyond its control, the key personnel (if any) stated in Schedule D and any replacements are used by the Consultant to carry out the Services and where substitutes or replacements are necessary (for any reason, including written objection by St Hilliers) that they are approved by St Hilliers;

**Design and Consultant Materials**

- m) where there is any Preliminary Design, it is satisfied that the Preliminary Design is suitable, appropriate and adequate for the purposes stated in the Brief;
- n) where the Services include any design, it will provide any detailed Consultant's Materials required by St Hilliers;
- o) it will permit St Hilliers and the Head Contract Principal to inspect the Consultant's Materials and other work produced in relation to the Services on reasonable prior notice;
- p) it has in place a certified Quality Assurance System conforming with AS/NZS ISO 9001;
- q) its design control procedures are in accordance with the Quality Assurance System;
- r) provide the Project Manager and Head Contract Principal on reasonable notice with access to its quality system to enable monitoring and quality auditing or, if expressly required by the Brief, the Consultant will at its own cost (or, if requested by St Hilliers in writing, at St Hilliers own cost) undertake an internal or external audit of the Quality Assurance system and make the results available to St Hilliers;
- s) it will ensure the Design Documents eliminate or minimise the need for any hazardous manual tasks to be carried out in connection with a plant or structure;
- t) it will provide to St Hilliers with each submission of Design Documents, a written report that specifies the hazard relating to the design of the structure (or part) for the purposes of the WHS Laws which, as far as the Consultant is reasonably aware, creates a risk to health or safety to those carrying out construction work on the structure (or part), and are associated only with the particular design;

**Basis of provision of Services**

- u) if necessary for provision of the Services, it has thoroughly inspected and investigated the Site, including any prior work, services, existing structures and other conditions and familiarised itself with all relevant Legislative Requirements and is satisfied itself that it can undertake and complete the Services for the Fee in accordance with all Legislative Requirements (and the fees and charges for meeting them), the Brief, the Contract Design Program and this Contract;
  - v) it has examined the Brief and made all necessary enquiries of St Hilliers as to its requirements and acknowledges and agrees that, on the basis of assumptions that the Consultant can be reasonably expected to make in accordance with sound professional principles, the Services will meet those requirements in the Brief;
  - w) it will regularly consult and communicate and cooperate with St Hilliers in relation to the progress of the Services, including meeting with St Hilliers representatives, the Head Contract Principal and its nominees including the Superintendent when reasonably requested and will promptly notify St Hilliers if it becomes aware of any circumstance which might have an adverse effect on the Project, its cost, design or progress;
  - x) it had all necessary access to, and has examined and understood all documents relevant to, its obligations under this Contract and has identified and agreed to accept the risks associated with the carrying out of the Services in accordance with this Contract;
  - y) it will notify St Hilliers immediately it becomes aware of any actual or potential conflict of interest and work with St Hilliers to manage that conflict;
  - z) at all relevant times it (and its Secondary Consultants) shall be properly licensed and hold all applicable accreditations and permits to carry out the Services for the purposes of any applicable legislation and has satisfied all lawful requirements in this regard, including without limitation, with respect to any compulsory fees, contributions and insurances and the Consultant warrants that it is in compliance with this clause as at the date of this Contract;
  - aa) it has not relied upon any representations, agreements or warranties by or on behalf of any party (including St Hilliers) in entering into this Contract, or contained expressly or impliedly within any documents made available by or on behalf of St Hilliers to the Consultant;
  - bb) it remains fully responsible for the Services whether or not St Hilliers reviews or accepts those Services and whether or not all or any of the Services are provided by Secondary Consultants;
  - cc) for the benefit of the Beneficiaries, that the Contract Fee covers all its costs of complying with its obligations (including the foregoing representations) under this Contract;
  - dd) where St Hilliers or the Consultant is required by law to employ a certain ratio of apprentices and trainees in relation to the Project, that the Consultant complies with those requirements either as agent for St Hilliers or on its own behalf;
  - ee) where St Hilliers requests the Consultant to supply St Hilliers with information required by St Hilliers for the purposes of the National Greenhouse and Energy Reporting Act 2007, or any legislation that applies to St Hilliers in relation to the prevention of modern slavery, that the Consultant takes all reasonable steps to provide that information;
  - ff) it will notify St Hilliers immediately that it makes an application under section 411 of the Corporations Act or any 'safe harbour' provisions apply to it under the Corporations Act.
  - gg) the Services shall be rendered with due diligence and integrity in a good and workmanlike manner and in accordance it has had an appropriate opportunity to negotiate these terms and conditions with St Hilliers prior to entry into the Contract and the terms and conditions represent a reasonable allocation of risk between the parties having regard to the nature of the Project, the Services and the respective roles of the parties;
  - hh) with the highest professional and ethical standards; and
  - ii) it shall perform all of its obligations hereunder in a sound and commercially reasonable manner with the standard of diligence and care normally employed by duly qualified persons in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken.
- 4.3 The Consultant acknowledges that St Hilliers has entered into this Contract in reliance on the undertakings given in sub clauses 4.1 and 4.2, that these undertakings shall remain unaffected despite any receipt or review of, or comment or direction on, the design documentation by the Superintendent or Project Manager, or any variation, and that failure to comply with any provision of sub clause 4.1 or 4.2 shall be a fundamental breach of this Contract.
- 4.4 This clause 4 survives termination of the Contract.



**5 CONSULTANT DESIGN**

Where the Services include the provision of Design Documents:

- 5.1 The Consultant will provide all Design Documents and draft Design Documents to St Hilliers for review within the time required to meet the Contract Design Program or as otherwise Directed by St Hilliers so as to give St Hilliers and the Project Manager the opportunity to review and comment on the Design Documents and monitor performance of the Consultant's design obligations in accordance with this Contract..
- 5.2 The Consultant acknowledges that failure to provide the Design Documents within the time required is likely to result in additional expenses being incurred by St Hilliers.
- 5.3 No Direction, review, comment, approval or otherwise by St Hilliers in relation to any Design shall relieve the Consultant from its obligation to ensure all Design complies with this Contract. St Hilliers' or the Superintendent's receipt of, or review of, or comment on, the Design Documents and any other documents provided by the Consultant, shall not relieve the Consultant from responsibility for the Consultant's errors or omissions or departure from the Consultant's Design Obligations or other requirements of this Contract.
- 5.4 Where possible, Submission of all Design Documents and draft Design Documents will be made into The approved project software by the Consultant's Representative.
- 5.5 The return of design review comments, approval, rejection or other directions may be delivered by The approved project software.
- 5.6 Without limiting the Consultant's obligations, the Consultant must:
- a) submit to St Hilliers, in accordance with the times or stages required, comprehensive Design Documents prepared by the Consultant relating to each of those times or stages, with notes or specifications, or both, as required for the execution of the Works;
  - b) allow a minimum three (3) week hold point for comments from St Hilliers with respect to the Development Application documentation and a minimum four (4) week hold point for comments from St Hilliers with respect to completed Design Documents for the Building Permit Application;
  - c) allow, in addition to the 'Hold Points' referred to in the above paragraph, at least 5 opportunities for review by St Hilliers in each stage of the design process ('Review Points');
  - d) allow at least 10 Business Days after the date the Design Documents is provided to St Hilliers and/or the Superintendent for St Hilliers and/or the Superintendent (if St Hilliers and/or Superintendent so desire) to consult with Consultant and to comment on the Design Documents;
  - e) consider and adopt the comments of St Hilliers and/or the Superintendent if in the reasonable opinion of the Consultant it is reasonable to do so;
  - f) not use the Design Documents until the earlier of:
  - g) the 10 Business Day period referred to above has expired; or
  - h) the Superintendent has confirmed (for the particular Design Documents in question) that it either has no comments or has provided all its comments on the Design Documents;
  - i) not amend any Design Documents which has been reviewed by St Hilliers and/or the Superintendent unless it gives amended Design Documents to St Hilliers and/or the Superintendent and the process described above has been repeated;
  - j) attend Review Points and workshops as required by St Hilliers
- 5.7 The obligations of the Consultant in clause 4 shall not be affected notwithstanding:
- a) that any design (including the Preliminary Design) has been carried out by or on behalf of the Head Contract Principal or St Hilliers and/or included in the Principal's Project Requirements and the Consultant acknowledges and agrees that:
    - i. prior to the date of the Contract it was provided with the Preliminary Design;
    - ii. it bears all risks that may arise as a result of the use by the Consultant of the Preliminary Design;
    - iii. the use of the Preliminary Design does not affect any of its obligations under the Contract or entitle it to make any claim (including a claim for a variation) against St Hilliers arising from it;
    - iv. it remains responsible for ensuring the Works will comply with the requirements of the Contract, including the Head Contract Principal's project requirements, despite the Preliminary Design;
    - v. if the Works are designed and constructed based on or adapting the Preliminary Design the Works will comply with the requirements of the Contract, including the Head Contract Principal's project requirements; and
    - vi. it will design, construct and complete the Works based on or adapting the Preliminary Design;
  - b) that St Hilliers has entered into a novation of any prior Contract between the Head Contract Principal and a consultant of the Head Contract Principal and thereafter has retained that consultant in connection with the Project Works;
  - c) the involvement of Secondary Consultants or subcontractors in the design of, or execution of, the Services;
  - d) any supervision, receipt or review of, or comment or direction on, or approval of or expression of satisfaction or dissatisfaction with, the Design Documents or the Services by or on behalf of the Superintendent or St Hilliers;
  - e) any receipt or review of, or comment or direction on, or consent to, the Design Documents or any part thereof by the Superintendent, including any amendment to the Design Documents because the Superintendent or St Hilliers did not consent to the Design Documents;
  - f) any Variation;
  - g) any amendments which the Consultant is required to make to the Design Documents;
  - h) the consent of St Hilliers or the Superintendent to the Design Documents or any part of them;



- 5.8 The parties acknowledge and agree that :
- a) receipt or review of, or consultation or comments in relation to, any Design Documents by St Hilliers or the Project Manager is solely for the purpose of monitoring the Design Documents and the performance of the Consultant;
  - b) neither St Hilliers nor the Project Manager owe any duty to the Consultant to review or check any Design Document for errors, omissions or compliance with the requirements of the Contract nor to comment upon the Design Documents
  - c) the review of, or consultation or comments in relation to, any Design Documents by St Hilliers or the Project Manager does not lessen or otherwise affect:
    - i. the Consultant's liabilities or responsibilities under this Contract or otherwise according to law; or
    - ii. the rights of St Hilliers, whether under this Contract or otherwise according to law.
- 5.9 If a party becomes aware of or discovers any discrepancies between the Design Documents and the Brief, that party must follow the procedures in clause 3.2 and clause 6 to the intent that such discrepancies are promptly rectified.
- 5.10 If St Hilliers notifies the Consultant that the Design Documents are not suitable, the Consultant shall submit new or amended documents.
- 5.11 The Consultant shall bear absolutely the risk of any defects in the work which may arise (whether directly or indirectly) as a result of any design work carried out by the Consultant or on its behalf and indemnifies St Hilliers in respect of all costs, damages, losses and claims suffered or incurred by or made against St Hilliers arising out of faulty or defective design.
- 5.12 Where St Hilliers supplies documents to the Consultant which are the property of the Head Contract Principal or of St Hilliers both those documents and all copies shall:
- a) remain the owner's property and be returned to the owner on written demand; and
  - b) not be used, copied nor reproduced for any purpose other than the Services.

**5A QUALITY**

Where required by St Hilliers, the Consultant must:

allow St Hilliers access to its Quality Assurance System to enable monitoring and quality auditing;

- c) provide such quality reports to St Hilliers as may reasonably be required from time to time.

**6 DIRECTIONS, INFORMATION AND MATERIALS**

- 6.1 St Hilliers shall give the Consultant's Representative from time to time such oral or written Directions as are necessary in the circumstances to fully facilitate the provision of the Services, including Directions as to:
- a) when the Services are to be performed;
  - b) the order of particular tasks involved;
  - c) (where applicable) behaviour in relation to presence on the Site, St Hilliers' premises, or premises or facilities for which St Hilliers has legal responsibility.
- 6.2 The Consultant shall comply with any Direction and (to the extent relevant) with all policies and procedures relating to Site Environmental management, occupational health, safety and security requirements.
- 6.3 If the Consultant's Representative requests that an oral Direction be confirmed in writing when the Direction is first received, the Consultant is not obliged to comply with the Direction until received in writing.
- 6.4 St Hilliers will provide the Consultant in a timely manner with such information, data, documents and materials in its possession as may be required by the Consultant in order for it to carry out the Services.
- 6.5 The Consultant will keep safe any such information, data, documents and materials and return them to St Hilliers on request or at the end of this Contract.
- 6.6 Where the Consultant considers that any information, instruction or Direction is inadequate or incomplete, it shall notify St Hilliers and/or the Project Manager promptly, giving relevant details. St Hilliers will respond promptly to any such notification.
- 6.7 St Hilliers may provide a direction to the Consultant to complete additional works under the Contract, subject to clause 17, after the date for Substantial Completion and prior to the end of the defects Liability Period. This additional works or variation works may be handled as a Separable Portion under the Contract to protect the Consultants rights under the Contract in relation to the original works completed prior to the date for Substantial Completion.

**7 REPRESENTATIVES**

Each party must notify the other of any change of representative/project manager, provided that the Consultant will not change its representative without the prior consent of St Hilliers.

**8 ASSIGNMENT, NOVATION, SUBCONTRACTING**

- 8.1 The Consultant agrees that its engagement may be assigned or novated by St Hilliers to:
- a) any related body corporate of St Hilliers;
  - b) any third party from whom St Hilliers is obtaining finance for the Services; or
  - c) if St Hilliers is not the design and construct contractor, any construction contractor engaged to design and construct the Project,
  - d) in accordance with this Contract (unless the Consultant forms the view that the entity is not reputable or is insolvent) and to:
  - e) the Site Owner, the Head Contract Principal or its nominee, including in the circumstances where the Head Contract is terminated or work is taken out of the hands of St Hilliers and the Head Contract Principal requires St Hilliers to novate contracts to the Head Contract Principal or its nominee;





- f) any third party to whom the Head Contract Principal, in its discretion, assigns or novates its rights under the Head Contract.
- 8.2 The Consultant agrees that it will, if Directed by St Hilliers, enter into a Deed in a form reasonably required by St Hilliers to give effect to the assignment or novation (which may be to the effect of the appropriate document set out in Schedule M or as otherwise required by St Hilliers or the Head Contract Principal), and will procure that any Secondary Consultant does the same, provided that if the Consultant or the Secondary Consultant does not enter into the appropriate deed, St Hilliers may execute such Deed on their behalf. For the purposes of effecting such novation only, the Consultant and each Secondary Consultant irrevocably appoints St Hilliers as its attorney to execute such Deed and such documents as are necessary to give effect to the novation.
- 8.3 St Hilliers may assign or novate any or all of its rights and obligations under this Contract. In particular, the Head Contract Principal is entitled to elect to take an assignment of all the right, title and interest in St Hilliers rights against the Consultant in relation to the Services; and for such purposes the Consultant irrevocably appoints St Hilliers as its lawful attorney to execute any instrument necessary to give effect to the assignment.
- 8.4 The Consultant shall not assign or novate the whole or any part of this Contract or the Services or any payment or other right, benefit or interest under this Contract without prior written approval from St Hilliers (including as to terms). St Hilliers is not obliged to agree to any novation unless the party is, in St Hilliers' reasonable opinion, reputable and not insolvent. Such novation will be on such reasonable terms and conditions as are determined by St Hilliers in its absolute discretion, which may be substantially in the form of the appropriate document in Schedule O.
- 8.5 The Consultant shall not subcontract the whole or any part of the Services, or allow a Secondary Consultant to do so, without:
- a) prior written approval from St Hilliers (which shall not be unreasonably withheld);
  - b) ensuring that its Secondary Consultant executes a Deed substantially in the form of Schedule J; and
  - c) except on such other reasonable terms and conditions as are determined by St Hilliers in its absolute discretion including (without limiting the generality of the foregoing) conditionally upon:
    - i. the Consultant obtaining from the Secondary Consultant the corresponding intellectual property rights granted to or vested in St Hilliers under this Contract;
    - ii. evidence that appropriate professional indemnity insurance has been obtained;
    - iii. agreement to do all things necessary and provide all documents, representations and certifications as may be required to enable the Consultant to comply with this Contract;
    - iv. supply of the proposed contract to St Hilliers, without prices;
    - v. agreement by the Secondary Consultant to St Hilliers or the Head Contract Principal publicly disclosing details of their engagement on the Project (see clause 8.7);
    - vi. the contract including provisions that the Secondary Consultant must not assign nor subcontract without the Consultant's written consent;
    - vii. the contract including provisions which may be reasonably necessary to enable the Consultant to fulfil the Consultant's obligations to St Hilliers;
    - viii. the contract including provisions reflecting this Contract's requirements as to access to accounts, compliance with Legislative Requirements, Privacy and Building Code;
    - ix. provision that if the Contract is terminated, the Secondary Consultant shall promptly execute a deed of novation in the required form (see Schedule O) and that for the purpose of effecting such novation only, irrevocably appoints St Hilliers to be the Secondary Consultant's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Secondary Consultant accordingly; and
    - x. any permission shall not relieve the Consultant of any liability under this Contract. The Consultant will be solely responsible for the management and co-ordination of its Secondary Consultants.
- 8.6 Where St Hilliers is required under its contract with the Head Contract Principal to obtain specific undertakings from the Consultant or its Secondary Consultants, if required by the Brief or requested by St Hilliers in writing, the Consultant will, and shall ensure that all Secondary Consultants will, provide a written undertaking in respect of the Services and the Consultants Materials to St Hilliers and/or the Head Contract Principal in the terms requested.
- 8.7 The Consultant acknowledges that St Hilliers may be required to provide the Superintendent with information about this Contract, the Consultant and any Secondary Consultants which the Superintendent reasonably requests. The Consultant acknowledges and agrees that St Hilliers and the Head Contract Principal may publicly disclose the details of the Consultant and any Secondary Consultant engaged by the Consultant, including their name and address and the work for which they have been engaged, and must obtain the consent of each Secondary Consultant to such disclosure.
- 8.8 The Consultant shall in each Secondary Contract entered into by the Consultant include a requirement that the Consultant and the Secondary-Consultant will, in the event of St Hilliers so requiring, at the option of St Hilliers, assign or novate to St Hilliers the whole of the Secondary Contract and any interest of the Consultant therein or right thereunder to St Hilliers and that the Secondary Consultant shall irrevocably consent to such assignment in the event of St Hilliers taking such action.
- 8.9 For the purposes of this Clause St Hilliers is hereby irrevocably appointed the attorney of the Consultant to execute on behalf of the Consultant any document or to carry out any act to effect any assignment or novation of any Secondary Contract from the Consultant to St Hilliers.
- 8.10 The Consultant will within seven (7) days of the signing of each Secondary Contract lodge with St Hilliers a copy of the Secondary Contract signed by the Consultant and the Secondary Consultant in a sealed envelope with a notation of the name of the Secondary Consultant and an identification of the relevant services.
- 8.11 Should administrators, receivers or managers be appointed in relation to the Consultant, such persons shall pay, perform and discharge the obligations of the Consultant under this Contract and be bound by the terms of this Contract in all respects as if such persons had been named as a party to the Contract in place of the Consultant.



8.12 This clause survives termination of this Contract.

## 9 THE SITE

- 9.1 St Hilliers will use reasonable endeavours to give the Consultant and its personnel such access to the Site as is necessary for the Consultant to perform the Services and the Consultant will do all things necessary to ensure that its relevant personnel are able to undertake Site induction from St Hilliers.
- 9.2 The Consultant must comply with all Legislative Requirements in relation to Environmental management, occupational health and safety on Site and must ensure that its employees, agents and Secondary Consultants obey the Site Rules. St Hilliers may direct the Consultant to remove from the Site any such person who misconducts themselves and may remove them if the Consultant fails to do so. The Consultant acknowledges that St Hilliers may conduct alcohol or drugs tests of personnel on Site in accordance with appropriate St Hilliers safety policies.
- 9.3 The Consultant must notify St Hilliers if it or any of its employees or agents damages any part of the Site or any work or property of St Hilliers, the Head Contract Principal or another contractor or consultant.
- 9.4 If the Consultant becomes aware of any pollution, contamination or Environmental issue relating to the Site, or discovers any minerals, fossils, article of value, archaeological evidence or artefact, the Consultant will not disturb the matter and will notify St Hilliers as soon as possible of the discovery, giving relevant details. Nothing in this clause implies that the Consultant has any obligation to discover such matters.
- 9.5 The Consultant must at all times give St Hilliers, the Head Contract Principal and their nominees (including the Superintendent) access (on reasonable notice) to any places off the Site where the Services or ancillary activities are being performed.
- 9.6 If the Consultant becomes aware of adverse Site condition that differs materially from those it should reasonably have expected when their proposal was submitted, the Consultant must notify St Hilliers in writing as soon as possible and in any event within 3 days after becoming aware of the adverse Site conditions.
- 9.7 The costs of complying with this clause are included in the Fee and the Consultant shall have no Claim in connection with its obligation to comply with this clause.

## 10 CONFIDENTIALITY

- 10.1 Each party will treat as confidential any information which the other designates as such, or which the first party should reasonably expect to be confidential information, except as required by law. The Consultant will not, without the prior consent of St Hilliers, unreasonably make public any information or details in connection with the Project, and will refer all media enquiries to St Hilliers.
- 10.2 Drawings, specifications and other information, samples, models, patterns and the like, supplied by either the Consultant or St Hilliers and marked or otherwise identified as confidential, shall be regarded as confidential and shall not be disclosed to a third party except with the prior agreement of the other party.
- 10.3 If required in writing by a party, the other party shall enter into a separate agreement not to disclose to anyone else any confidential matter even after the issue of the Final Certificate or the earlier termination of this Contract.
- 10.4 Each party undertakes to use documents and information which are not in the public domain and which it obtained from the other party in connection with this Contract solely for the purpose of performing under this Contract and to treat them confidentially and to make them available or disclose them to third parties only insofar as it is necessary for performance under this Contract. Such obligation shall remain in effect after the termination of this Contract.
- 10.5 The Consultant shall impose corresponding obligations of confidentiality as contained in this clause upon its employees and all Secondary Consultants.

## 11 INTELLECTUAL PROPERTY AND MORAL RIGHTS

### Intellectual Property

- 11.1 Ownership of intellectual property rights in the Consultant's Materials vests immediately in its creation in St Hilliers or its nominee (which may be the Head Contract Principal), which party hereby grants the Consultant a non-exclusive, royalty-free licence to use those rights for the purpose of the Services only subject to any conditions or limitations of third parties notified by St Hilliers to the Consultant. If requested by St Hilliers to do so, the Consultant will execute any document which may be necessary to enable intellectual property rights in all Consultant's Materials to vest in St Hilliers or its nominee. This does not prevent the Consultant from using the Consultant's Materials to carry out the Services on a non-exclusive, non-transferable, royalty-free basis for the term of the Contract, but the Consultant must not distribute or exploit the Consultant's Materials unless St Hilliers agrees.
- 11.2 The Consultant:
- shall ensure that the Design Documents are used, copied and supplied only for the purpose of the Services;
  - grants a royalty-free, perpetual, irrevocable, non-exclusive, world-wide, licence (including the right to sublicense) to St Hilliers and the Head Contract Principal to use, communicate, exploit, copy, modify and create derivative works from the Consultant's Materials for the purpose of exercising its rights in relation to the Consultant's Materials for any purpose related to the Project or the Services (including additions, alterations, repairs and maintenance);
  - grants a royalty-free, perpetual, irrevocable, non-exclusive, world-wide, licence (including the right to sublicense) to St Hilliers and the Head Contract Principal to use, communicate, exploit, copy, modify and create derivative works from the Consultant's Materials for the purpose of exercising its rights in relation to the Consultant's Materials for any purpose related to the Project or the Services (including additions, alterations, repairs and maintenance);
  - agrees that St Hilliers may transfer this licence to any person to whom St Hilliers assigns or novates this Contract and may grant a sub-licence to any other person in connection with the Project as it determines to be necessary;
  - represents that the Consultant owns or is licensed to use the Consultant's Materials and that the Consultant's Materials and methods of working provided by or on behalf of the Consultant shall not infringe any Intellectual Property Right of any third party and that any fees payable by the Consultant in respect of the use of any Intellectual Property Right have been paid;



- f) represents that where any patented articles, processes or inventions are supplied and/or used in the execution of the Services, it has not infringed any patent rights in respect thereof and all royalties or other sums payable in respect thereof shall be deemed to have been included in the Contract Sum and shall be paid by the Consultant;
  - g) indemnifies St Hilliers and the Head Contract Principal against any Liabilities either may suffer as a result of any breach of the representations in the previous paragraphs.
- 11.3 Nothing in this clause prevents the Consultant retaining its intellectual property rights in any original ideas, processes or systems created other than for the purposes of the Services but used by it in carrying out the Services.
- 11.4 St Hilliers agrees:
- a) that the Consultant's Materials may be used for additional purposes as agreed by St Hilliers from time to time;
  - b) to indemnify the Consultant against any Liabilities it may incur as a result of any documents provided to the Consultant by St Hilliers infringing the intellectual property rights of any third party.

**Moral Rights**

- 11.5 By entering into this Contract, the Consultant its successors and assigns authorise each of the Head Contract Principal, St Hilliers, and the successors, licensees and assigns of each of them, to do any act or omission that might otherwise infringe the moral rights (as defined in the Copyright Act 1968 (Cth)) of the Consultant and any officer or employee. The Consultant must not, and must take all reasonable steps to ensure that its directors, other officers, employees and Secondary Consultants do not, sue, enforce any claim, bring any action or exercise any remedy in respect of any breach or alleged breach of any person's Moral Rights in respect of the Project documents or the Works by the Head Contract Principal, any third party to whom the Head Contract Principal sub-licences (expressly or impliedly) or grants any other right to use, possess, modify, vary or amend any Project documents or the Works, or any third party to whom the Head Contract Principal assigns any Intellectual Property Rights in the Project documents or the Works, nor any other consultants.
- 11.6 In addition, the Consultant shall when requested by St Hilliers procure from every person involved in the provision of any professional services connected with the Services (including each of its relevant employees and relevant employees of its Secondary consultants and subcontractors and any person who is or claims to be an author of any part of the Design Documents, whether or not making any identification of that person),
- a) to the extent permitted by law, an unconditional and irrevocable waiver of all Moral Rights which that person has or claims to have in the relevant Design Documents in terms approved by St Hilliers and the Head Contract Principal (an indicative form is in Schedule P) ; and
  - b) a written consent signed by that person consenting to the Head Contract Principal and St Hilliers and any nominee of either of them and each party named as a registered proprietor of any part of the Site to which the Design Documents relate using, modifying, revising, disclosing, reproducing, transmitting, exhibiting, failing to attribute, falsely attributing, subjecting to derogatory treatment, communicating, adapting, altering or publishing or otherwise dealing with any work or subject matter in which they might have moral rights, including the Design Documents, which consent shall either be in the form of a deed and correctly executed as such, and/or shall be in return for the payment by the Consultant to that person of \$1, in any manner desirable:
    - i. without attribution of authorship to the author and without identifying any person as the individual responsible for creating any particular material; and
    - ii. including for the purposes of modifying, relocating, demolishing or destroying any part of the Works relevant to the Design Documents without notice to, or consultation with, the author.

**Third Party Claims**

- 11.7 Each party must notify the other party immediately of any Third Party IPR Claim of which it becomes aware. If any Third Party IPR Claim is made the Consultant must at its own expense without delay:
- a) procure the right for St Hilliers to continue using the Consultant's Materials;
  - b) modify the Consultant's Materials in a way that does not adversely affect St Hilliers' use of the Material so that it becomes non-infringing; or
  - c) replace the Consultant's Materials, with non-infringing Material acceptable to St Hilliers.
  - d) Any amount payable by St Hilliers to a Third Party IPR Claimant as a result of a Third Party IPR Claim must be paid to the Third Party IPR Claimant by the Consultant on behalf of St Hilliers.

**Knowhow licence**

- 11.8 Each party will have the continuing right to use any knowhow it acquires under or in connection with the Contract as long as it always complies with its obligations under this Contract in relation to confidential information.

**12 LEGISLATIVE REQUIREMENTS**

- 12.1 Subject to the operation of clause 17.4, the Consultant shall comply at its cost with all relevant Legislative Requirements relating to it as applicable from time to time including the NSW Design and Building Practitioners Act 2020 and Regulations, Migration Act, the Code and the Guidelines. Nothing in this clause shall limit the operation of clause 12A.
- 12.2 The Consultant shall obtain all permits, approvals, give all necessary notices and pay all fees required in connection with the Services or the performance of the Services except those stated in Schedule D which St Hilliers will meet.
- 12.3 The Consultant shall comply with any Australian legislation relating to modern slavery which applies to the Consultant and take all reasonable steps to:
- a) comply with St Hilliers' anti-modern slavery policy; and
  - b) assist St Hilliers to comply with that policy and such modern slavery legislation as applies to St Hilliers;
- 12.4 by ensuring through appropriate due diligence practices that no modern slavery offences are committed in any part of its business including its supply chain. The Consultant shall keep adequate records of compliance with this clause.



- 12.5 The Consultant shall have no Claim in consequence of its obligation to comply with this clause or its failure to comply with this clause.
- 12.6 The Consultant must comply with Australian legislation relating to NSW Design and Building Practitioners Act 2020 and Regulations, modern slavery, the Migration Act, the Code, its Guidelines and the NSW Code prior to entering into this Contract and continue to do so in relation to the Works. It must ensure that any contract between it and a Secondary Consultant imposes obligations on them equivalent to this clause; and contains commitments to apply the Code. In particular, the Consultant:
- a) shall provide a written notification to St Hilliers if any change to this Contract is proposed which would affect compliance with the NSW Design and Building Practitioners Act 2020 and Regulations, Migration Act, the Code, its Guidelines or the NSW Code, specifying the extent to which compliance will be affected;
  - b) shall keep adequate records of compliance with the Australian legislation relating to NSW Design and Building Practitioners Act 2020 and Regulations, modern slavery, the Migration Act, the Code, its Guidelines and the NSW Code by itself, its Secondary Consultants, subcontractors, material suppliers and employees who perform work in relation to the Project and its related entities (as defined in the relevant Code) ('Project Parties');
  - c) agrees to provide, and to require that the Project Parties provide, the Commonwealth, the Head Contract Principal or any person authorised by either of them, including a person in the ABCC or CCU Inspectorate, the NSW Building Commissioner and an authorised officer under the Migration Act, with access to their premises and records to:
    - i. inspect any work, material, machinery, appliance, article or facility;
    - ii. inspect and copy any record relevant to the Project and Services;
    - iii. interview any person;
    - iv. produce a specified document within a specified period in person, by fax or by post;
    - v. as is necessary to demonstrate their compliance with the Migration Act, the Code, the NSW Code and their Guidelines;
  - d) shall not engage any other party in relation to the work under this Contract (1) where that engagement would breach any sanction imposed by Commonwealth Minister or body or the party has had an adverse Court or Tribunal decision (not including decisions under appeal) for a breach of workplace relations law, work health and safety law, or workers' compensation law and has not fully complied, or is not fully complying, with the order; or (2) unless that party is able to satisfactorily demonstrate its compliance with the Migration Act; or (3) if that other party has been convicted of any modern slavery offence; or
  - e) must ensure that all expressions of interest and requests for tender it issues for the engagement of any Secondary Consultant, contains commitments for that party to apply the Code and not commit or have committed any modern slavery offence;;
  - f) shall promptly report any breaches of the Code to St Hilliers and/or the ABCC or the NSW Code to the CCU, NSW Design and Building Practitioners Act 2020 and Regulations, to the NSW Building Commissioner, any actual or suspected modern slavery offences on its part, or on the part of any entity in its supply chain whose services or products are relevant to the Services, to St Hilliers, and any inconsistency between any Design Documents, Consultant's Materials or materials and relevant Legislative Requirements to St Hilliers;
  - g) acknowledges and agrees that if it does not comply with the Code or Guidelines in the performance of this Contract such that a sanction against the Consultant is applied by Commonwealth Minister or body, without prejudice to any rights that would otherwise accrue, those parties shall be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Consultant or a related entity in respect of work funded by the Commonwealth or its agencies;
  - h) warrants that it has not been convicted of any modern slavery offence and, except as notified to St Hilliers in writing, no State, Territory or Federal Government, agency or authority has at any time in the past applied a sanction against the Consultant pursuant to the NSW Design and Building Practitioners Act 2020 and Regulations, Code or NSW Code nor has investigated the Consultant or any of its officers, employees or other persons associated with it in relation to modern slavery offences;
  - i) acknowledges that it may give preference to engaging parties that have a demonstrated commitment to:
    - i. adding and/or retraining trainees and apprentices;
    - ii. increasing the participation of women in all aspects of the industry; or
    - iii. promoting employment and training opportunities for Indigenous Australians in regions where significant indigenous populations exist;
  - j) irrevocably authorises, and gives its consent to, the Beneficiary Group publishing, disclosing or otherwise making available details or other information relating to the compliance or non-compliance or suspected noncompliance with the Code or NSW Code or their respective Guidelines by the Consultant or its Secondary Consultants (including as part of the process of the consideration or imposition of sanctions) to any person (including without limitation, any State, Territory or Federal Government, agency or authority) and hereby agrees to obtain the consent of its Secondary Consultants to the publication or disclosure of information under this clause;
  - k) forever releases and discharges the Beneficiary Group from any claims, demands, suits or actions which the Consultant, or a person claiming on the Consultant's behalf, might otherwise be entitled to make arising out of or in any way in connection with the publishing, disclosure or otherwise making available of the details or other information as referred to in paragraph (i);
  - l) agrees to indemnify the Beneficiary Group from any claims, demands, suits or actions which a director, other officer or employee of the Consultant, or a person claiming on behalf of any of those, may make arising out of or in any way in connection with the publishing, disclosure or otherwise making available of the details or other information as referred to in paragraph (i); and



- m) acknowledges that compliance with Australian legislation relating to NSW Design and Building Practitioners Act 2020 and Regulations, modern slavery, the Migration Act, the Code the NSW Code and their respective Guidelines shall not relieve them from responsibility to perform this Contract, nor from liability for any defect in the Works arising from such compliance.

**12A BUILDING CODE 2016****12A.1 Definitions**

For the purposes of this clause:

- a) ABCC means the Australian Building and Construction Commission referred to in subsection 29(2) of the Act.
- b) Act means the Building and Construction Industry (Improving Productivity) Act 2016 (Cth).
- c) Building Code 2016 means the Code for the Tendering and Performance of Building Work 2016.
- d) Building Contractor has the same meaning as in the Act.
- e) Building Industry Participant has the same meaning as in the Act.
- f) Building Work has the same meaning as in subsection 3(4) of the Building Code 2016.
- g) Commonwealth Funded Building Work means Building Work in items 1-8 of Schedule 1 of the Building Code 2016. [needs to be deleted for non-Cwth work]
- h) Enterprise Agreement has the same meaning as in the Fair Work Act 2009 (Cth).
- i) Exclusion Sanction has the same meaning as in subsection 3(1) of the Building Code 2016.
- j) Related Entity has the same meaning as in subsection 3(2) of the Building Code 2016.
- k) Secondary Consultant means a Building Contractor or Building Industry Participant who the Consultant has entered, or proposes to enter, into a Secondary Contract with to undertake any of the Services.
- l) Workplace Relations Management Plan means the "Workplace Relations Management Plan" (if relevant) developed by the Head Contract Principal or St Hilliers and approved by the ABCC in accordance with Part 6 of the Building Code 2016 that applies to the Project.
- m) Works means the Commonwealth Funded Building Work that is the subject of this Contract. [needs to be amended for non-Cwth work]

**12A.2 Compliance with the Building Code 2016**

- a) The Consultant declares as at the date of commencement of this Contract in relation to the Services; and must ensure that during the term of this Contract in relation to the Services, that it and its Related Entities involved in the Services and its Secondary Consultants:
  - i. comply with the Building Code 2016;
  - ii. are not covered by, and do not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016;
  - iii. are not subject to an Exclusion Sanction;
  - iv. have not had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or competition and consumer law and failed to comply with the decision, direction or order (including a decision, direction or order which has not been stayed or revoked and for which the period for compliance has expired without the relevant party having complied);
  - v. have not in the previous 3 years had an adverse decision, direction or order made by a court or tribunal for a breach of the Act, a designated building law, work health and safety law or the Migration Act 1958;
  - vi. will only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia where required by the Head Contract and/or Building Code 2016;
  - vii. unless approved otherwise by the ABC Commissioner, are not excluded from performing Building Work funded by a State or Territory Government; and
  - viii. where required by St Hilliers, comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code that applies to the Project.
- b) Without limiting and notwithstanding subparagraph (a) (iii), the Consultant will ensure that remedial action is taken to rectify any behaviour on the part of it and its Secondary Consultants that is non-compliant with the Building Code 2016.
- c) The Consultant must every six months during the term of the Contract advise St Hilliers whether:
  - i. it has in the preceding 3 years, had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958 (Cth); or
  - ii. it or its Related Entities have in the preceding 3 years:
    - A. been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) to a Building Contractor or Building Industry Participant; or
    - B. owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant.
- d) Compliance with the Building Code 2016 does not relieve the Consultant from responsibility to perform the Contract, or from liability for any defect arising from compliance with the Building Code 2016.
- e) The Consultant must:
  - i. notify the ABCC of any breach or suspected breach of the Building Code 2016 as soon as practicable but no later than 2 working days (being days other than Sunday or a public holiday) after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach; and

- ii. if it notifies the ABCC of a breach or a suspected breach of the Building Code 2016 under subparagraph (i), immediately notify St Hilliers in writing and within 14 days of making that notification, further notify both the ABCC and St Hilliers of the actual steps taken to rectify the breach.
- f) The Consultant acknowledges the powers and functions of the ABC Commissioner and the ABCC under the Act and the Building Code 2016 and will ensure that it and its Secondary Consultants comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests for entry under section 72 of the Act, requests to interview any person under section 74 of the Act, requests to produce records or documents under sections 74 and 77 of the Act and requests for information concerning matters relating to the Building Code 2016 under subsection 7(c) of the Building Code 2016.
- g) The Consultant must only enter into a Secondary Contract for any of the Commonwealth Funded Building Work that is the subject of the Contract where:
  - i. the Secondary Consultant is not subject to an Exclusion Sanction or excluded from undertaking work funded by a State or Territory Government unless approval to do so is provided by the ABC Commissioner;
  - ii. the Secondary Consultant is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016;
  - iii. the Secondary Consultant has submitted a declaration of compliance, including the further information outlined in the attachment to the declaration of compliance, substantively in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code 2016;
  - iv. the Secondary Contract contains provisions substantively in the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code 2016;
  - v. the Secondary Consultant has advised, prior to entering into a Secondary Contract with the Consultant, whether the Secondary Consultant has within the preceding three year period:
    - A. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the *Migration Act* 1958 (Cth); or
    - B. been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) or owed any unsatisfied judgment debts (including by any Related Entity) to a Building Contractor or Building Industry Participant; and
  - vi. the Secondary Consultant has agreed to update the advice referred to in the previous paragraphs every 6 months for the duration of the Secondary Contract.
- h) The Consultant must ensure that it and its Secondary Consultants comply with the clauses contained in the Secondary Contract referred to in subparagraph (g) (iv), and provide St Hilliers with relevant declarations of compliance on request. The Consultant acknowledges that declarations and other relevant information may be made available by St Hilliers to the Head Contract Principal.
- i) The Consultant must notify St Hilliers and the ABCC (using the appropriate ABCC form) as soon as practicable when a dispute arises about a payment claim by a Secondary Consultant or there is a delay in payment of a payment claim submitted by a Consultant after the date on which payment of that payment claim falls due. For the purposes of this paragraph a disputed or delayed progress payment claim means a dispute or claim about:
  - i. the Consultant failing to pay a Secondary Consultant all moneys due and payable in accordance with the terms of the relevant Secondary Subcontract;
  - ii. an amount specified in a payment statement/notice of dispute issued under the relevant Security of Payment Legislation resulting in a Secondary Consultant not being paid by the Consultant by the date prescribed by those laws;
  - iii. other than in Western Australia and Northern Territory, the Consultant:
    - A. failing to issue a payment statement/notice of dispute under the relevant Security of Payment Legislation to a Secondary Consultant in response to a valid payment claim; and
    - B. failing to pay all moneys due and payable by the date prescribed in the relevant Security of Payment Legislation regarding the payment claim referred to in the previous paragraph;
  - iv. the Consultant failing to pay the adjudicated amount to a Secondary Consultant following a determination by an adjudicator under the relevant Security of Payment Legislation by the date prescribed in those laws;
  - v. the Consultant failing to pay a Secondary Consultant following a binding determination by a third party such as a court, arbitrator, or expert in accordance with the relevant determination; or
  - vi. any other disputed or delayed payment claim required to be notified to St Hilliers and the ABCC to ensure compliance with the Building Code 2016.

### **13 BASIS OF CONTRACTUAL RELATIONSHIP**

Each of the parties represents and warrants to the other that:

- 13.1 it is duly incorporated and has the power to own property, to carry on its business and to perform the Contract;
- 13.2 it has the power and has taken all corporate and other action required to enter into the Contract and to authorise the execution and delivery thereof and the performance of its obligations thereunder;
- 13.3 no litigation, arbitration, criminal or administrative proceedings are current, pending or (to its knowledge) threatened which, if adversely determined, would have a material adverse effect on its ability to perform its obligations under the Contract; and
- 13.4 no representation, warranty or information provided by it contains any untrue statement of material fact or omits to state a material fact necessary to make such representation and warranty not misleading in light of the circumstances under which it was made.



**14 LIABILITY OF CONSULTANT AND INDEMNITY**

- 14.1 Without limiting any other provision of this Contract, the Consultant will be liable for and shall indemnify and keep indemnified St Hilliers and hold it harmless from and against any Liabilities or Claims which St Hilliers may suffer or incur arising out of, in connection with, or in any way related to any act, omission or breach of this Contract by or on behalf of the Consultant including:
- a) the negligent performance of this Contract or the Services or defects in the Consultant's Materials;
  - b) any suspension by a Secondary Consultant, or other party engaged by the Consultant and that is carrying out work which forms part of the Services;
  - c) loss of or damage to the property of St Hilliers or the Head Contract Principal or any third party;
  - d) Claims by any person or corporation against St Hilliers or the Head Contract Principal in respect of personal injury, illness or death or loss or damage to any property;
  - e) any act or omission in relation to this Contract or any of the matters the subject of this Contract by the Consultant, including repudiation;
  - f) in relation to which the Consultant is entitled to claim indemnity under any insurance policy (provided that the rights of St Hilliers will not be limited in respect of any amount the Consultant would have been entitled to recover under any insurance but for the act or omission of the Consultant or any person for whom it is responsible – that is, this indemnity applies to any Liability or Claim as aforesaid for which the Consultant:
    - i. is indemnified in respect of that liability by a policy of insurance; or
    - ii. would have been indemnified if the Consultant had:
      - A. diligently pursued a claim under that policy of insurance;
      - B. complied with the terms and conditions of that policy of insurance; or
      - C. complied with its insurance obligations under this Contract.);
  - g) any Claim by the Consultant against St Hilliers under the Competition and Consumer Act 2001 (Cth), including for misrepresentation;
  - h) any Event of Default;
  - i) loss arising from any criminal acts or fraud on the part of the Consultant or those for whom it is responsible;
  - j) loss arising from any breach of an obligation under this Contract regarding confidentiality or intellectual property; or
  - k) any other Liability whatsoever;
- arising out of, in connection with or as a consequence of the carrying out by the Consultant of the Services or wilful default on the part of the Consultant except to the extent that St. Hilliers or of any of its employees, subcontractors, agents or consultants, the Head Contract Principal or any third party has caused or contributed to such Liability. It is not necessary for St Hilliers to meet the Liability or Claim in order to pursue its remedies under this clause.
- 14.2 This clause applies until the date which is 12 years from the date of this Contract and shall continue after this Contract ends.
- 14.3 Without limiting any other provision in this Contract or any right of St Hilliers at law or otherwise, and despite any other provision in this Contract, the indemnity contained in this clause is not affected by the insurances referred to below and includes indemnification by the Consultant for any deductible or excess amount under those insurances.

**15 INSURANCE**

- 15.1 Before commencing the Services and before receiving any payment under this Contract, the Consultant shall:

**Professional Indemnity Insurance**

- a) effect (and maintain until the expiry of 7 years after the issue by the Head Contract Principal of the Final Certificate, professional indemnity insurance with levels of cover not less than the amount set out in the Key Terms with a reputable insurer, noting the interests of St Hilliers and the Head Contract Principal, and which includes provisions for (i) one automatic reinstatement of the sum insured, (ii) loss of documents and (iii) breaches of the Consumer and Competition Act and have a retroactive date of no later than the date on which the Consultant commences the Services or any earlier preparatory work;

**Insurance of Employees**

- b) insure against statutory and common law liability for death or illness of, or injury to, persons employed by the Consultant. The insurance cover shall be maintained until Completion or any earlier Termination Date. Where permitted by law, the insurance shall be extended to indemnify St Hilliers for its statutory liability to persons employed by the Consultant. The Consultant shall include a requirement in its contracts with Secondary Consultants that every Secondary Consultant is similarly insured.

**Public Liability Insurance**

- c) effect and maintain until Completion or any earlier Termination Date, a Public Liability Policy which shall:
  - i. cover St Hilliers and the Consultant and their respective subcontractors, consultants, Secondary Consultants, agents and employees employed from time to time in relation to the Services for their liabilities to third parties and subject to the consent of its insurer, provide a principal's extension in favour of St Hilliers or note St Hilliers' interests under this Contract;
  - ii. cover the Consultant's Liability to St Hilliers for loss or damage to property (other than property required to be insured in the previous section) and the death of or injury to any person (other than liability which the law requires to be covered under a workers' compensation insurance policy);
  - iii. indemnify St Hilliers as one of the class of insured persons (except to the extent that St. Hilliers or of any of its employees, subcontractors, agents or consultants, has caused or contributed to such Liability;

- iv. provide insurance cover for an amount in respect of any one occurrence of not less than the sum in the Key Terms;
  - v. be with a reputable insurer, and
  - vi. contain terms, where relevant and to the extent legally permissible, to the effect that the insurer waives any rights of subrogation and/or contribution which it may have against St Hilliers as a named insured party and agrees to treat each insured as a separate insured party as though a separate contract of insurance had been entered into with each of the insured parties, without increasing the number of deductibles or the overall limit of indemnity.
- d) include a requirement in its contracts with Secondary Consultants that every Secondary Consultant effects and maintains similar insurance to the same cover levels and for at least the same periods, and must ensure that they do this;
- e) immediately notify St Hilliers of any cancellation, variation or reduction of any Consultant's or Secondary Consultant's insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Services or the Contract.

**Evidence of Insurance and St Hilliers remedies**

- 15.2 Before commencing the Services, receiving any payment under this Contract, and whenever requested in writing by St Hilliers, the Consultant shall provide satisfactory evidence of all insurances effected and maintained by itself (which may be in the form of a certificate of currency) and by all of its Secondary Consultants. Whenever requested in writing by St Hilliers, the Consultant shall provide satisfactory evidence of those matters and of all insurances effected and maintained by its Secondary Consultants. The Consultant shall provide a copy of its professional insurance policy and any information in relation to the policy to St Hilliers on request and acknowledges that the information may be shared with the Superintendent.
- 15.3 The Consultant shall immediately notify St Hilliers of any cancellation, variation or reduction of any insurance policy of itself or any Secondary Consultant, and of the occurrence of any event which may give rise to any claim under any such insurance policy in respect of the Services or the Project and shall keep St Hilliers informed of all significant developments concerning the claim. The Consultant shall ensure that Secondary Consultants in respect of their operations similarly inform St Hilliers. The Consultant acknowledges that St Hilliers may share this information with the Head Contract Principal.
- 15.4 The Consultant is not entitled to any payment under this Contract or otherwise if it has not fully complied with its obligations under this clause. In particular, if:
- a) the Consultant fails to promptly provide satisfactory evidence of compliance, by itself or its Secondary Consultants; or
  - b) any default is made by a Secondary Consultant in effecting or keeping up any insurance policy required; or
  - c) any such insurance policy becomes void or voidable;
- then without prejudice to other rights or remedies St Hilliers may (but is not obliged to) effect or keep up that insurance policy and the cost thereof shall be moneys due and payable from the Consultant or, failing it, the Secondary Consultant, to St Hilliers. Where the defaulting party is the Consultant, St Hilliers may refuse payment until such evidence is produced by the Consultant. The Consultant must fully cooperate with St Hilliers (including by providing required information to brokers and underwriters) to allow St Hilliers to effect insurance as contemplated by this clause.
- 15.5 The Consultant will use its reasonable endeavours to assist St Hilliers to collect or recover any moneys due to St Hilliers in respect of any Consultant's or Secondary Consultant's insurance policy.
- 15.6 The Consultant must ensure that the insurance policies maintained under this Contract include provisions which:
- a) require the insurer, whenever the insurer gives St Hilliers, the Consultant or a Secondary Consultant a notice of cancellation or other notice concerning the policy, at the same time to inform St Hilliers in writing that the notice has been given;
  - b) provide that a notice of claim given to the insurer by St Hilliers, the Head Contract Principal, the Superintendent, the Consultant, or a Secondary Consultant shall be accepted by the insurer as a notice of claim given by the Consultant; and
  - c) require the insurer, whenever the Consultant fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to St Hilliers and the Consultant prior to the insurer giving any notice of cancellation.
- 15.7 Any insurance required to be effected in accordance with the Contract by the Consultant in joint names, shall include a cross liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons comprising the insured and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result) and not impute any acts, omissions, states of knowledge or breach of the duty of disclosure by any one insured to the other insured.

**16 PROGRESS AND COMPLETION**

- 16.1 The Consultant must progress the Services promptly and diligently, with due expedition, without delay and in accordance with the Contract Design Program as varied from time to time. Both parties will in good faith keep each other notified promptly of all matters which may affect the progress or timing of the Services.
- 16.2 Where requested by St Hilliers, the Consultant will promptly provide a programme to demonstrate its ability to meet the Contract Design Program.
- 16.3 The Consultant acknowledges and agrees that St Hilliers may Direct the Consultant in what order and at what time the various stages or parts of the Services shall be performed, including to accelerate the Services at St Hilliers' discretion, in which case any claim for additional costs or expenses shall be valued in accordance with clause 17, except where the acceleration is required in order to make good the Consultant's delay or other failure to adhere to the Contract Design Program, in which case the acceleration will be at the Consultant's cost.



- 16.4 The Consultant will give written notice ('Delay Notice') to St Hilliers as soon as practicable (and not more than 5 Business Days) after the earlier of:
- the date of becoming aware of any matter or event which may adversely affect the progress or scope of the Services; or
  - the date on which it should reasonably have become aware of the commencement of such matter or event.
- 16.5 A Delay Notice must refer to any previous Delay Notice relating to the same issue and identify, to the extent reasonably possible:
- the relevant facts and what details are not yet known (if any);
  - the period during which the cause of delay existed or is expected to exist, including number of days claimed;
  - the impact of the delay, if known;
  - any adjustment(s) to the Contract Design Program requested/ any extension of time claimed;
  - any recommendations to minimise the effect of the delay;
- 16.6 If at the time of the Notice the effects of the delay continue beyond 7 days after the commencement of the occurrence causing the delay and the Consultant wishes to claim an extension of time in respect of further delays, the Consultant must submit a further written claim to St Hilliers
- Every 7 days after the first written claim until 7 days after the end of the effects of the delay; and
  - Containing the information required by clause 16.5
- 16.7 If the Services are delayed by a matter outside the control of the Consultant, and if it complies with the previous provisions of this clause, the Consultant will be entitled to an extension of time to the Anticipated Completion Date if that is possible consistently with the obligations upon St Hilliers under the Head Contract, in which case St Hilliers will make a reasonable adjustment to the Contract Design Program to accommodate the delay. The Consultant shall not be entitled to any extension of time unless it shall have taken proper and reasonable steps to both preclude the occurrence of the delay and/or to avoid or minimise the consequence thereof.
- 16.8 If the Services are delayed by a matter within the reasonable control of the Consultant, St Hilliers may Direct the Consultant to suspend, vary the timing, order, sequence or manner of undertaking the Services and the Consultant shall have no Claim in respect thereof.
- 16.9 St Hilliers may (but is not obliged to), for any or no reason, in its absolute discretion, adjust the Completion Design Program, in which case it will promptly notify the Consultant of the change. This clause is for the benefit of St Hilliers only.
- 16.10 Without limiting any other rights which St Hilliers may have at law or under this Contract, if the Consultant does not complete the Services in accordance with the Contract Design Program and that failure results in St Hilliers being liable to the Head Contract Principal for damages (including liquidated damages) under the Head Contract and/or results in the Head Contract Principal deducting damages (including liquidated damages) under the Head Contract, then the Consultant indemnifies St Hilliers from and against all such damages, which Liability may be recovered by St Hilliers as debt due and immediately payable to St Hilliers by the Consultant. The Consultant acknowledges that the liquidated damages payable by St Hilliers under the Head Contract are \$ [ ] N/A ] per day.
- 16.11 St Hilliers may by written notice to the Consultant from time to time create one or more Separate Stages in relation to the Services in which case the provisions of this Contract shall apply to each Separate Stage as if each reference to the Services is to that Separate Stage.
- 16.12 The Consultant has no entitlement to any extension of time or additional payment or to any Claim in connection with any delay or disruption to the progress of the Services or the Works, whatever the cause, except as expressly set out in this clause and the Consultant agrees to indemnify and keep indemnified St Hilliers against any claim for costs, expenses, loss or damage and against any claim for adjustment of the Contract Sum for or in connection with or arising out of any delay in or disruption to the progress of the Works or the Services.
- 17 VARIATIONS**
- 17.1 Subject to the other sub-clauses of this clause, the Consultant shall vary the Services and/or the Design Documents or provide additional Services where Directed by St Hilliers. The Consultant shall have no Claim for any Variations (or the work associated therewith) not approved by St Hilliers in writing and (for greater certainty) including words expressly authorising and directing the Variation prior to commencement of the Variation ('approved Variation'), or St Hilliers may in its discretion have the Variation carried out by another entity, in which case the Consultant will allow free access to such entity and their employees on the Site as required.
- 17.2 No fee is payable for any Variation required, in the reasonable opinion of St Hilliers as a result of errors, omissions or delay of the Consultant, its employees, Secondary Consultants or agents, or from any ambiguity, omission, error, inadequacy, inaccuracy or discrepancy in the Consultant's Materials except to the extent that such errors, omissions, delay, ambiguity, inadequacy, inaccuracy or discrepancy is caused or contributed to by an act or omission of St Hilliers. Otherwise, the appropriate Fee adjustment for the Variation will be priced in the following order of precedence:
- as provided in a written quotation by the Consultant accepted by St Hilliers prior to commencement of the Variation;
  - as otherwise agreed between the parties;
  - at the rates set out in Schedule D for the particular types of work described there, which rates include all loadings, allowances, overheads (Site and head office) and profits; or
  - to the extent that Schedule D is silent, at reasonable rates or prices determined by St Hilliers in its discretion, which may include a reasonable amount for profit and overheads and may take into account (but not be bound by) any relevant schedule of tender prices or bill of quantities.
  - The giving of a bill of quantities by St Hilliers to the Consultant does not mean that any rates in that bill apply to Variations (unless the parties specifically agree that this is the case), nor that the work describe in the bill is the only work agreed under this Contract. That is, work not described or priced in the bill is not necessarily a Variation.



- 17.3 If the Consultant reasonably believes a Direction would change the general scope of the Services, the Consultant is not obliged to comply with the Direction if it gives St Hilliers written notice of that objection within 7 days of receiving the Direction but must in all other respects continue to provide the Services in so far as possible. If it wishes to make a claim arising out of or in connection with the Direction:
- a) within 5 days of the receipt of the Direction and before commencing work on the subject matter, give notice to St Hilliers that it considers the Direction constitutes or involves a Variation;
  - b) within 10 days after giving the notice under paragraph a), submit a written claim to the St Hilliers which includes the following minimum information:
    - i the Direction or other fact, matter or thing upon which the Claim is based;
    - ii detailed particulars concerning why the Direction or other fact, matter or thing constitutes a Variation;
    - iii the legal basis for the Claim, clearly identifying the specific term;
    - iv the facts relied upon in support of the Claim in sufficient detail to permit verification; and
    - v details of the amount claimed and how it has been calculated in accordance with the Contract or in sufficient detail to permit verification.
    - vi If the Direction or fact, matter or thing upon which the Claim is based or the consequences of the Direction or fact, matter or thing are continuing, the Consultant must continue to give the information required by clause 17.3 b) every 20 days after the written claim under clause 17.3 was submitted, until the consequences thereof have ceased.
    - vii continue to carry out the Consultant's Activities and the Works in accordance with the Contract and all Directions of St Hilliers, including any Direction in respect of which notice has been given..
- 17.4 If the Consultant fails to comply with clause 17.1
- a) St Hilliers will not be liable upon any Claim by the Consultant; and
  - b) the Consultant will be absolutely barred from making any Claim against St Hilliers,
- 17.5 arising out of or in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 17.3 applies.
- 17.6 A variation claim whether under clause 17.1, 17.2 or 17.3, cannot be claimed under clause 18 unless the variation has been submitted to St Hilliers, with all the particulars required under clause 17, to assess the claim, unless the variation is submitted at least 15 days prior to the submission of a Payment Claim.
- 17.7 Where a Variation is Directed by St Hilliers as a result of a change in a Legislative Requirement which occurs after the date of this Contract, and which could not reasonably have been anticipated by either party at that date, if the variation requires additional work, the Consultant shall be entitled to both a fee for the Variation and an extension of time, and if the variation requires less work or causes St Hilliers to incur less cost than would otherwise have been the case, St Hilliers may reduce the Fee accordingly.
- 17.8 The price of an approved Variation will be added to or subtracted from the Fee as required.
- 17.9 The Consultant acknowledges that the Brief constitutes a generic description only of the Project. The Consultant shall not be entitled to make any Claim whatsoever, including for additional payment or extension of time, as a result of any amendment or alteration to the Brief or any Variation Directed as a result of such amendment or alteration.
- 17.10 A direction by St Hilliers to vary anything in the Design Documents shall be a variation to the work under the Contract only to the extent that the Design Documents, before such variation, complied, or would have complied, with this Contract including the Principal's Project Requirements.
- 17.11 In order to facilitate the timely completion of the Services, St Hilliers may at any time and from time to time vary the Services by omission by deleting any work that St Hilliers by notice in writing specifies, and amend the Contract Fee accordingly. In that event the Consultant shall have no claim against St Hilliers as a result of that deletion, whether or not the omitted work is carried out by others. In determining the value of work taken out of the Contract, the deduction shall include a reasonable amount for profit and overheads.
- 17.12 If the Consultant requests St Hilliers to direct a variation for the convenience of the Consultant, St Hilliers may do so. The direction must be written and may be conditional. Unless the direction provides otherwise, the Consultant shall be entitled to neither extra time nor extra money.
- 17A EVIDENCE OF PAYMENT TO SECONDARY CONSULTANTS AND STAFF**
- 17A.1 At the request of the Consultant, St Hilliers may on behalf of the Consultant make payment directly to Secondary Consultants or the Consultant's staff in relation to their work on the Project out of moneys payable to the Consultant, including amounts certified as payable under relevant legislation.
- 17A.2 Prior to the making of a Payment Claim pursuant to clause 18, and whenever so requested by St Hilliers from time to time:
- a) the Consultant must deliver to St Hilliers an original statutory declaration substantially in the form in Schedule K(1) completed by the Consultant, or where the Consultant is a corporation, by the representative of the Consultant who is in a position to know the facts attested to, that:
    - i. all Secondary Consultants performing work under this Contract have been approved by St Hilliers; and
    - ii. all Secondary Consultants have been paid all moneys and entitlements due and payable to or for (for example in relation to superannuation) them up to the date of submission by the Consultant of the most recent payment claim in respect of the work under this Contract; and
    - iii. all staff who at any time have been engaged by the Consultant on work under this Contract have been paid, in accordance with the relevant contract, award or industrial instrument, all moneys and entitlements due and payable to or for them up to the date of submission by the Consultant of its most recent payment claim, in respect of the work under this Contract; and



- iv. the information it has provided to St Hilliers in relation to the Site personnel register is current and correct; and
  - v. the Consultant has informed all Secondary Consultants and any subcontractors of Secondary Consultants performing work under the Contract of the existence of the Building Industry Fairness (Security of Payment) Act 2017 (if the project is in Queensland) or of equivalent legislation in the place where the project is situated; and
  - vi. if requested in writing, reasonable supporting documentary evidence thereof;
- b) if requested by St Hilliers, the Consultant must deliver to St Hilliers an original statutory declaration substantially in the form in Schedule K(2) completed by any Secondary Consultant, or where the Secondary Consultant is a corporation, by a representative who is in a position to know the facts attested to:
- i. that all staff who have been engaged by a Secondary Consultant of the Consultant have been paid, in accordance with the relevant contract, award or industrial instrument, all moneys due and payable to them up to the date of submission by the Secondary Consultant of its most recent payment claim in respect of that work; and
  - ii. that all subcontractors of the Secondary Consultant have been paid all that is due and payable to them up to the date of submission by the Secondary Consultant of its most recent payment claim in respect of that work; and
  - iii. if requested in writing, reasonable supporting documentary evidence thereof.
- c) The Consultant acknowledges that St Hilliers may release to any Secondary Consultant details of payments in percentage terms made by St Hilliers to the Consultant in respect of the Consultant's Services or any part thereof unless the Consultant shows reasonable grounds why such details should not be released or satisfies St Hilliers that all payments due and payable to the Secondary Consultant by the Consultant have been paid.
- d) Without limiting clause 18.7:
- i. if an employee or Secondary Consultant obtains a court order in respect of moneys unpaid by the Secondary Consultant or Consultant, and produces to St Hilliers the court order and a statutory declaration that it remains unpaid, St Hilliers may pay the amount of the order, and costs included in the order, to the employee or Secondary Consultant and the amount paid shall be a debt due from the Consultant to St Hilliers;
  - ii. at the request of the Consultant and out of moneys payable to the Consultant, St Hilliers may on behalf of the Consultant make payment directly to an employee or Secondary Consultant.

**18 PAYMENT**

- 18.1 The Consultant shall provide St Hilliers with details of its bank account for payments as set out in Form G08. The Consultant shall submit one Payment Claim per calendar month on the Payment Claim Date for a fair portion of the Fee, having regard to the Services completed to the Payment Claim Date provided that the Payment Claim Date shall be no later than the date of the month for 'Payment Claim Timing' nominated in the Key Terms, or if that is not a Business Day, no later than the previous Business Day. Notices by the parties to each other in relation to Payment Claims may be made by any method permitted by law in the Jurisdiction in and, to the extent permitted in the Jurisdiction, by the methods specified in Schedule L. Notices shall be sent to the appropriate numbers or addresses as notified by either party to the other from time to time.
- 18.2 The Consultant's Fee (or any part thereof) where it is an agreed amount is set out in the Key Terms and where it is based on hourly rates is at the rates set out in Schedule D. The Fee is exclusive of GST unless otherwise stated and includes all costs, expenses and overheads that may be or will be incurred by the Consultant and the Consultant's profit in relation to the performance of the Services. All expenses of performing the Services shall be borne by the Consultant except to the extent otherwise provided in Schedule D.
- 18.3 With each Payment Claim and as a pre-condition to payment, the Consultant must provide St Hilliers with the following, together with any supporting evidence that may be reasonably required by St Hilliers:
- a) A signed declaration made on the date of the Payment Claim substantially in the form of Schedule G or as otherwise acceptable to St Hilliers;
  - b) The claim or tax invoice must clearly detail the project detail, contract number, Subcontractor details showing the ABN of the Consultant unless the Consultant is the trustee of a trading trust, in which case the tax invoice must also show the ABN of the trust;
  - c) evidence of the existence and currency of the insurances required to be taken out by the Consultant under this Contract (which may be by way of provision of a photocopy of a current certificate of currency) and (if requested) of required insurance being effected by any Secondary Consultant;
  - d) variation and Extension of Time Schedules identifying notices and claims made in relation to variations or extensions of time;
  - e) any representation and/or guarantee (including from Secondary Consultants) required under this Contract or reasonably requested by St Hilliers prior to the date of the Payment Claim including as set out in the form in Schedule J to this Contract;
  - f) a declaration made on the date of the Payment Claim substantially in the form of Schedule H as to ongoing compliance with the Code;
  - g) For Federally funded projects and where the Consultant's Fee is greater than \$3,636,363.64 (ex GST, \$4 million including GST) a valid satisfactory Statement of Tax Record must be provided with the payment claim.
  - h) any other reports and/or certifications reasonably requested by St Hilliers to verify the Payment Claim, including certificates from Secondary Consultants or subcontractors as to whether or not they, and any contractors employed by them, have been paid by the Consultant;
  - i) (where any part of the Payment Claim relates to goods or materials in storage off Site, in transit to the Site or on the Site but not yet a fixed part of the Works) a signed statutory declaration that the Consultant owns that thing or will obtain legal title to it by the date for payment and a bond to the value of the offsite goods or materials, at the Consultant's expense;



- j) and, if required by St Hilliers, must provide a supporting statement for the purposes of the relevant Security of Payment Legislation.
- 18.4 If the Consultant fails to lodge the Payment Claim and/or satisfy the pre-conditions for the making of a Payment Claim set out above by the Payment Claim Date, then the Payment Claim is not valid under this agreement and will be rejected by St Hilliers. To the full extent permitted by law, St Hilliers shall not be obliged to pay the claimed amount, any scheduled amount or any other amount to the Consultant in respect of an invalid Payment Claim. The Consultant's entitlement to submit a Payment Claim for that calendar month lapses and will not arise again until the following Payment Claim Date for the following month (and will be subject to the same pre-conditions). The Payment Claim submitted in relation to the Payment Claim submitted on the Payment Claim Date for the following month may include the amount the subject of the lapsed claim as well as the amount relating to the following Reference Date.
- 18.5 St Hilliers must assess each Payment Claim (whether or not it considers the claim to be validly made) and, within ten (10) Business Days after the Payment Claim is served, issue a Payment Schedule which sets out the amount of payment (if any) that St Hilliers proposes to make to the Consultant, together with reasons if the amount is different to the Payment Claim. In assessing the Payment Claim, St Hilliers may have regard to the cost to complete the Services and to rectify any defects in the Design Documents and any Liabilities in consequence of delays in provision of the Services or any breach of this Contract by the Consultant. Payment Schedules shall be issued in the manner set out in Schedule L.
- 18.6 The Consultant agrees to execute a CVA containing confirmation of the matters dealt with in Schedule G and a release in favour of St Hilliers as a precondition to any other subsequent payments to the Consultant. Any Payment Claim which the Consultant may have which is not included in the CVA or notified in writing to St Hilliers within 5 Business Days of issue of the CVA or notified in writing to St Hilliers within 5 Business Days of the commencement of the events giving rise to the Claim (whichever is the earlier) shall, to the extent permitted by law in the jurisdiction in which the Consultant's Activities are carried out, be absolutely barred and forever released and discharged. Nothing in this clause shall restrict the Consultant from defending or bringing a cross claim (provided the cross claim related to the subject matter of the claim against the Consultant) or a claim for contribution with respect to, any claim, action, suit or proceeding brought by the Head Contract Principal against the Consultant. Nothing in this clause is intended to create any additional rights on the part of the Consultant.
- 18.7 St Hilliers will comply with all applicable Security of Payment Legislation with respect to payments that are due to persons and will ensure that payments which are due and payable by it are made in a timely manner and are not unreasonably withheld. Subject to the other terms of this Agreement and to any longer payment periods permitted, or exemptions available, under relevant legislation, St Hilliers shall pay the amount assessed as being payable:
- a) where the payment claim is for Works carried out in New South Wales, within 20 Business Days after a Payment Claim is served;
  - b) where the payment claim is for Works carried out in Queensland, within 25 Business Days after a Payment Claim is served;
  - c) where the payment claim is for Works carried out in Western Australia, within 42 days after a Payment Claim is served;
  - d) where the payment claim is for Works carried out in the Northern Territory, within 28 days after a Payment Claim is served;
  - e) where the payment claim is for Works carried out in any other State or Territory, within 30 Business Days after a Payment Claim is served
  - f) where the Payment Claim is for Works carried out in any other State or Territory and a shorter period (than that specified in 16.7(e) directly above) is required by the relevant legislation for that State or Territory, then that shorter period will apply.
- 18.8 Without limiting St Hilliers' rights under this Contract, St Hilliers may, subject to applicable Security of Payment Legislation:
- a) deduct from any money due, or reasonably anticipated by St Hilliers to become due to the Consultant, any money due or claimed from the Consultant to St Hilliers whether under or in connection with this Contract or otherwise ;
  - b) at any time and from time to time, by a further Payment Schedule, correct any error which has been discovered in any previous Payment Schedule, other than a Final Payment Schedule;
  - c) where St Hilliers is required by law to deduct or withhold from any payment made to the Consultant an amount on account of any Tax:
    - i. make the required deduction or withholding;
    - ii. pay the appropriate Authority the full amount of that deduction or withholding in accordance with the relevant law;
    - iii. deliver to the Consultant the receipt for that payment; and
    - iv. pay the balance of the amount required to be paid to the Consultant under the Contract;and in doing so St Hilliers has fulfilled its payment obligations to the Consultant; and no failure or mistake by St Hilliers in relation to a Payment Schedule will prevent or prejudice its entitlement to retain, deduct, withhold or set off any amount.
- 18.9 Unfixed goods or materials will not be included in the value of work in a Payment Schedule unless:
- a) St Hilliers is satisfied that the unfixed goods and materials have not been prematurely ordered and are necessary to enable the Consultant to comply with its obligations under this Contract;
  - b) the Consultant gives St Hilliers:
    - i. additional approved Security equal to the payment claimed for the unfixed goods and materials; and
    - ii. such evidence as may be required by St Hilliers that title to the unfixed goods and materials will vest in St Hilliers upon payment;
  - c) the unfixed goods and materials are clearly marked as the property of St Hilliers and are on the Site or available for immediate delivery to the Site; and
  - d) the unfixed goods and materials are properly stored in a place approved by St Hilliers.

Upon payment of a Payment Schedule which includes unfixed goods and materials, title in the unfixed goods and materials will vest in St Hilliers.

- 18.10 Without limiting the foregoing, the Consultant will remain liable to St Hilliers for breach of this Contract, negligence in relation to the Services or breach of any Legislative Requirement, until the expiry of the applicable statutory limitation period.
- 18.11 Payment by St Hilliers of any part of the Fee is not an admission by St Hilliers that the Services have been carried out in accordance with this Contract.
- 18.12 The Consultant acknowledges and agrees that, subject to applicable Security of Payment Legislation, a failure by St Hilliers to set out in a Payment Schedule an amount which St Hilliers is entitled to retain, deduct, withhold or set-off (whether under this Contract or otherwise) from the amount which would otherwise be payable to the Consultant by St Hilliers under the Contract will not prevent or prejudice St Hilliers' right to subsequently exercise that right to retain, deduct, withhold or set-off any amount which St Hilliers is entitled to retain under this Contract or otherwise.
- 18.13 After becoming aware of the occurrence of a relation-back day (as defined in the Corporations Law) in respect of the Consultant, St Hilliers shall not make any payment (other than a payment made pursuant to a Legislative Requirement) to a the Consultant without the concurrence of the official receiver or trustee in bankruptcy of the estate of the bankrupt or the liquidator, as the case may be.
- 18.14 In any adjudication application made by the Consultant in relation to a Payment Claim, the parties agree that they will request in writing that the Adjudicator:
- a) at all times act impartially between the parties, in accordance with all applicable Legislative Requirements; and
  - b) include in their determination of any application the reasons for their determination and the basis on which any amount or date has been determined.
- 18.15 All disputes between the parties about payment of Payment Claims will, as far as practicable, be resolved in a reasonable, timely and cooperative way. Subject to the rights of the Consultant at law, any payment dispute will be resolved in accordance with Clause 24.
- 18.16 St Hilliers will in relation to any Project involving Commonwealth-funded building work:
- a) comply with any requirements relating to the operation of any project bank account or trust arrangement that apply to it in pursuant to the Code;
  - b) report any disputed or delayed progress payment to the ABC Commissioner and the Head Contract Principal as soon as practicable after the date on which the payment falls due;
  - c) not engage in illegal or fraudulent phoenix activities for the purpose of avoiding any payment due to another building contractor or building industry participant or other creditor; and
  - d) not encourage or coerce any party to avoid compliance with applicable Security of Payment Legislation.

## **19 GST**

- 19.1 Capitalised terms not otherwise defined in this Contract and used in this clause have the same meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth),
- 19.2 Each party represent that it is registered for GST when it enters into this Contract and that it shall notify the other if it ceases to be registered.
- 19.3 A progress payment claim under this Contract is not a tax invoice and St Hilliers shall not be required to make a payment under this Contract until the Consultant has provided a tax invoice in relation to that payment in the form required by St Hilliers.
- 19.4 All amounts and consideration in respect of a supply made under or in connection with this Contract are exclusive of GST to the extent that it is not otherwise expressly included.
- 19.5 If GST is imposed on or in respect of any supply made under or in connection with this Contract, then the consideration payable for that supply by the recipient of the supply ("Recipient") shall be increased by an amount determined by multiplying the consideration otherwise payable by the rate at which GST is imposed. Amounts payable under this clause will be payable at the same time the other consideration for the supply is payable.

## **20 CONSEQUENCES OF EVENT OF DEFAULT AND SUSPENSION**

- 20.1 If the Consultant commits an Event of Default, including breaching any term of this Contract, and/or there is a defect in the Services (including material or work provided by the Consultant which is not in accordance with this Contract), St Hilliers may give the Consultant notice that it requires the Event of Default, breach or defect to be remedied including a Direction:
- a) to progress and or accelerate the Works to meet the then current Design or Construction Program;
  - b) to redesign, replace or correct the material or work;
  - c) to increase, decrease or omit any part of the work;
  - d) to change the character or quality of any material or work or of anything described in the Brief or the Design Documents;
  - e) to change the levels, lines, positions or dimensions of anything described in the Brief or the Design Documents;
  - f) within certain times. Except where this would be inconsistent with a Direction, the Consultant shall promptly redesign, replace or correct material or work that is not in accordance with this Contract at no additional cost.
- 20.2 If:
- a) the Event of Default, breach or defect is not capable of remedy or is capable of remedy but is not remedied to St Hilliers' satisfaction within the time specified in the notice (or, if no time is specified, promptly);
    - i. the Consultant becomes Insolvent; or
    - ii. the Consultant has not showed good cause as to why St Hilliers should not act under this clause;
  - b) subject to the Corporations Act and relevant Security of Payment Legislation, St Hilliers may at its discretion, by notice to the Consultant (which may be by way of the Direction referred to in clause 20.1):

- i. suspend the Services or payment under this Contract; and/or
  - ii. take the Services out of the hands of the Consultant ('Removal'); and/or
  - iii. terminate this Contract immediately.
- 20.3 In addition, St Hilliers may suspend the Services as provided in clause 22.1.
- 20.4 If this Contract is terminated by St Hilliers under this clause and/or the Services are suspended or subject to Removal for reasons not related to a default by St Hilliers, then without limiting any other remedy which St Hilliers may have, St Hilliers may do any of the following without payment of compensation to the Consultant:
  - a) employ and pay others to carry out the work (whether that work constitutes a negative Variation or otherwise) which may in its opinion be necessary to give effect to the Direction or meet the requirements of the Contract or have the Services completed by others;
  - b) direct that the work be omitted from the Services as a negative Variation and the Contract Fee be adjusted accordingly;
  - c) take possession of the materials used by the Consultant in the performance of the Services including any Design Documents and other similar documents, information and materials produced by the Consultant in relation to the Project which are reasonably required by St Hilliers to facilitate completion of the Project;
  - d) require the Consultant to assign the Consultant's Materials to St Hilliers without payment;
  - e) contract with such of the Consultant's Secondary Consultants;  
as are reasonably required by St Hilliers to facilitate completion of the Services taken out, and the Consultant will only be paid for those Services performed by the Consultant prior to the date on which it received notice of the Termination, Suspension or Removal.
- 20.5 Such payment will not be due until St Hilliers or others have completed the relevant work or the Services and will be reduced by:
  - a) any amounts payable by the Consultant under this Contract; and
  - b) any additional Liabilities incurred by St Hilliers in the completion of the relevant work or the Services over and above the amount which would otherwise have been paid to the Consultant if the work had been completed by the Consultant,
  - c) subject to the Corporations Act, St Hilliers' estimate of the amount of any other loss or damage to which it may be exposed by reason of the Consultant's default or insolvency;  
including any costs of having the relevant work or the Services completed by others (which may be also be recovered by St Hilliers as a debt due and owing to St Hilliers by the Consultant).
- 20.6 St Hilliers may also retain a contingency amount calculated by St Hilliers as appropriate to protect against claims during the limitation of liability period under the Head Contract. The Consultant shall remain responsible to St Hilliers for such work executed by others as if it had been executed by the Consultant pursuant to this Contract.
- 20.7 If St Hilliers causes the Services to be completed by other parties, whether or not it has terminated this Contract, it shall notify the Consultant in writing as to:
  - a) the cost which St Hilliers has incurred, with full calculations;
  - b) the difference between that cost and the amount which would have been paid to the Consultant if it had completed the Services;
- 20.8 Where the cost to St Hilliers has exceeded the amount, which would have been paid to the Consultant, the difference shall be recoverable by St Hilliers from the Consultant.
- 20.9 St Hilliers may direct the Consultant that it elects to accept the material or work notwithstanding that it is not in accordance with the Contract. In that event the resulting decrease (if any) in the value of the Services and any other loss suffered by St Hilliers and/or the Head Contract Principal will be valued as a negative Variation.
- 21 TERMINATION**
- 21.1 The Contract may be terminated at any time by mutual agreement.
- 21.2 In addition, St Hilliers may at any time, for any or no reason, including where this Contract is frustrated, in its absolute discretion terminate this Contract:
  - a) by reasonable prior written notice, or
  - b) immediately, on any amount specified in this Contract as the limit on the Consultant's liability being reached.

In the event of a termination pursuant to this clause, St Hilliers will pay the Consultant the contract value of the Services to the Termination Date, less any amounts payable by the Consultant under this Contract.
- 21.3 St Hilliers shall not be liable to pay the Consultant for any Liabilities relating to the termination. If St Hilliers elects to terminate the Contract then St Hilliers may employ another Consultant to complete the Services.
- 21.4 Upon receipt of a notice of termination, the Consultant must:
  - a) stop work as specified in the notice and comply with any other directions or requests included in the notice, in particular in relation to the Consultant's Materials; and
  - b) take all reasonable action to mitigate any costs, damages or losses that it may incur as a result of a termination, including negotiating with the manufacturer of any materials or component of equipment to cancel any order that may have been placed.
- 22 SUSPENSION**
- 22.1 St Hilliers may at any time, for any or no reason, in its absolute discretion suspend the Project or the Services by reasonable prior written notice or immediately: upon suspension of any part of the Project by the Superintendent or Head Contract Principal, in relation to a default or omission, to comply with a legislative requirement (including a court order), or for the protection or safety of any person or property. In the event of a suspension pursuant to this clause,



- a) St Hilliers will pay the Consultant the contract value of the Services to the date from which the suspension applies (except where the suspension was caused by the default of the Consultant);
  - b) the Consultant may be entitled to an adjustment to the Contract Design Program and/or extension of time, depending upon the duration of the suspension;
  - c) the Consultant will not be entitled to any further or additional payment and St Hilliers shall not be liable to pay the Consultant for any Liabilities relating to the suspension so long as the suspension does not exceed 3 months;
  - d) the Consultant agrees to recommence the Services as soon as reasonably practicable, when so Directed by St Hilliers.
- 22.2 If St Hilliers has suspended this Contract for breach and the Consultant remedies the breach within a reasonable time thereafter, St Hilliers shall end the suspension.
- 22.3 If the Consultant wishes to suspend the carrying out of the whole or part of the Services, otherwise than in accordance with Legislative Requirements, the Consultant must obtain St Hilliers prior written approval. St Hilliers may approve the suspension at its absolute discretion and may impose conditions of approval.
- 22.4 If the Consultant becomes aware that a Secondary Consultant is entitled to suspend work, the Consultant must immediately give to St Hilliers a copy of all correspondence (including correspondence from any Secondary Consultant) relating to that suspension and the related claim.

### **23 CONSEQUENCES OF TERMINATION**

- 23.1 If this Contract is terminated by St Hilliers for default by the Consultant,
- a) subject to paragraph (b), the rights and liabilities of the parties shall be the same as they would have been at common law if the Consultant had repudiated this Contract and St Hilliers had elected to treat this Contract as at an end and recover damages;
  - b) the Consultant's entitlement for breach of this Contract or on any other legal basis shall not exceed the amount payable to them for the Services up to the Termination Date which remains unpaid, less any amounts payable by the Consultant under this Contract.
- 23.2 Rights and obligations under this Contract that are capable of having effect or application after expiry or termination of this Contract (other than those entitling the Consultant to submit Payment Claims and those expressly modified by the Contract upon expiry or termination) will continue after expiry or termination and will not merge. Termination shall not release the Consultant from liability in respect of any breach, non-performance or non-observance of any provision, stipulation or obligation to be observed or performed by it under this Contract and, without limiting the foregoing, the provisions of this Contract relating to the following matters will survive termination of this Contract:
- a) the obligation of the Consultant to continue insurance for 7 years after Completion (clause 15.1 (a));
  - b) the rights of St Hilliers to take the Services out of the hands of the Consultant, to have them completed by others and to deduct any costs of having the Services completed by others from moneys payable to the Consultant (various clauses including 18 and 19);
  - c) St Hilliers' rights in relation to assignment and novation (clause 8 generally);
  - d) the obligations of the Consultant in relation to defects including in relation to Services executed after the termination date (various clauses including 12 and 18);
  - e) all indemnities and limitations of liability in favour of either party.
- 23.3 On termination, or if the Services are taken out of the hands of the Consultant, then:
- a) the Consultant shall, where so directed by St Hilliers, deliver to St Hilliers the original and all sets and copies of the Design Documents and any other and other similar documents, information and materials produced by the Consultant in relation to the Services (other than those copies required to be retained for record keeping and corporate governance purposes) which are reasonably required by St Hilliers to facilitate the Works and St Hilliers may, without payment of compensation have the Services completed by others;
  - b) St Hilliers may require the Consultant to assign to St Hilliers for no consideration the benefit of any Secondary Contract for the execution of the Services and for the purposes of effecting such assignment only the Consultant hereby irrevocably appoints St Hilliers to be the true and lawful attorney of the Consultant with full power and authority to execute such assignment on behalf of the Consultant and to bind it accordingly but on terms that a Secondary Consultant shall be entitled to make any reasonable objection to any further assignment thereof by St Hilliers.

### **24 DISPUTES**

- 24.1 If a difference or dispute (together called a "Dispute") between the parties arises in connection with this Contract, then either party (the 'sender') shall by hand, The approved project software or by registered post, give the other (the 'recipient') a written Notice of Dispute describing the Dispute and giving reasonable details.
- 24.2 The parties shall continue to perform their obligations under this Contract despite the existence of a Dispute. This clause is subject to all relevant Security of Payment Legislation, to the extent applicable.
- 24.3 Within 14 Business Days of the recipient receiving the Notice of Dispute, a Consultant's representative who is authorised to bind the Consultant shall communicate at least once, whether in person or by electronic means, with St Hilliers with a view to reaching a resolution. All aspects of the communication (except the fact of it taking place) shall be privileged.
- 24.4 The Consultant agrees to make any adjudication application under the relevant Security of Payment Legislation to the Resolution Institute. Only if that body ceases to be accredited or is unable or unwilling to accept the application may the Consultant proceed to make an adjudication application to another authorised nominating authority.
- 24.5 Subject to all relevant Security of Payment Legislation, but notwithstanding any other provision of this Contract, if within 28 days of service of a Notice of Dispute (Service Date) the parties so agree, the Dispute may be referred by either party to expert determination. If within 10 Business Days after the Service Date the parties have not agreed upon an expert the expert shall be



nominated by the Chairperson for the time being of the Chapter of the Resolution Institute in the State or Territory where the Project is located in accordance with the Resolution Institute Expert Determination Rules unless otherwise agreed.

- 24.6 Except where the parties otherwise agree in writing or the rules being applied by the expert otherwise provide:
- a) each party shall bear its own costs and pay one half of the expert's fees and expenses;
  - b) the expert shall not act as an arbitrator;
  - c) the expert must not communicate with one party without the knowledge of the other party; and
  - d) the determination of the expert shall be final and binding on the parties.
- 24.7 If a dispute has not been resolved within 28 Business Days of the Service Date, unless the parties have agreed to refer the matter to expert determination, in which case clauses 24.4 and 24.5 shall apply, nothing prevents the Dispute being litigated or prejudices the right of a party to institute proceedings to enforce payment or seek injunctive or urgent declaratory relief in relation to this Contract.
- 24.8 This clause survives termination of the Contract.

## **25 COMMUNICATIONS**

- 25.1 A notice (and other documents) may be delivered by being properly addressed and sent to the address in this Contract or the address last communicated in writing to the person giving the notice by hand, post, facsimile or email, or (until Completion) by submission into The approved project software. Each party shall notify the other promptly of any change of address. After Completion, the Consultant shall not use The approved project software for communications to St Hilliers. Documents, but not notices required to be given or received under the Contract, may be given and received by way of e-mail or electronic transmission.
- 25.2 A notice shall be deemed to have been given and received on the earliest to occur of:
- a) actual receipt;
  - b) confirmation of correct transmission of fax or email;
  - c) the next Business Day after a notice is submitted into The approved project software (provided that notices from the Consultant after Completion will not be sent through The approved project software and are not deemed received), or
  - d) three Business Days after posting.
- 25.3 All documents and other communications to be given by the Consultant to St Hilliers including warranties from third parties must be in the English language and all persons appointed by the Consultant to deal with St Hilliers must be fluent English speakers.

## **26 CIVIL AND PROPORTIONATE LIABILITY**

- 26.1 In determining the rights, obligations and liabilities of the parties in any claim arising under the Contract or in relation to the subject matter of the Contract, to the maximum extent permitted by law, the operation of any Proportionate Liability Legislation which would otherwise be applicable is excluded in relation to all and any rights, obligations and liabilities of the parties with respect to any matter to which the relevant legislative provisions referred to above would apply but for this clause whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or on the basis of quantum meruit, quasi contract or of any other principle of law or equity and the indemnity provisions of the Contract will apply notwithstanding any provision in any applicable Proportionate Liability Legislation, to the maximum extent permitted by law.
- 26.2 The Consultant warrants in favour of St Hilliers that:
- a) the Consultant will not seek to rely upon any of the legislative provisions referred to in the previous sub-clause in any proceedings taken by St Hilliers against the Consultant arising out of or in connection with the Services;
  - b) if, notwithstanding the previous provisions of this clause, the provisions of any Proportionate Liability Legislation are applied in relation to any claim by St Hilliers against the Consultant arising under the Contract or in relation to the subject matter of the Contract, the Consultant will indemnify St Hilliers against any loss or damage St Hilliers is not able to recover from the Consultant because of the operation of those provisions; and
  - c) the Consultant will ensure that all policies of liability insurance (other than statutory policies) which the Consultant is required by the Contract to effect or maintain include cover for liabilities assumed by the parties as a result of the exclusion of the operation of any Proportionate Liability Legislation; and
  - d) the Consultant will include provisions similar in effect to this clause into each Secondary Contract.

## **27 NOTIFICATION OF CLAIMS AND TIME LIMIT**

- 27.1 All money claims, other than claims for progress payments made in accordance with this Contract and submitted in the ordinary course, whether for damages, compensation, unjust enrichment, restitution, or adjustment to the Contract Sum, all matters of interpretation and clarification of this Contract and all claims whether in contract, tort (including negligence), unjust enrichment or otherwise (hereinafter collectively referred to as a "claim") shall be dealt with in accordance with this clause.
- 27.2 Any claim which the Consultant could have made against St Hilliers and has not made within 45 days after the Completion Date shall be barred. Nothing in clause 27 shall restrict the Consultant from defending, or bringing a cross claim (provided the cross claim related to the subject matter of the claim against the Consultant) or a claim for contribution with respect to, any claim, action, suit or proceeding brought by St Hilliers against the Consultant. Nothing in this clause is intended to create any additional rights on the part of the Consultant.
- 27.3 As soon as practicable after a party becomes aware of any claim in connection with the subject matter of the Contract, that party must give to the other party a written notice of the general basis and quantum of the claim or a notice of dispute.
- 27.4 Except for Claims in respect of which this Contract provides for specific time limits, the Consultant must give St Hilliers a written notice within 21 days of the first occurrence of the Direction or other fact, matter or thing on which any Claim is based specifying that the Consultant proposes to make a claim and identifying the Direction or other fact, matter or thing on which the Claim will be based. Where the Consultant fails to provide the notice within this 21 day period, St Hilliers will not be liable (insofar as it is possible to exclude such liability) and the Claim will be barred.





**28 AMENDMENTS**

- 28.1 This clause applies to all attempts to amend or vary the terms of any Contract Document whether before or after the Commencement Date and whether before or after this Contract comes into effect.
- 28.2 This Contract may be amended only by written agreement between the parties. No amendment will be enforceable unless in writing and executed by the St Hilliers Project Manager.
- 28.3 No marked up changes to this Contract will be accepted as an amendment to this Contract unless initialled by the St Hilliers Project Manager.

**29 MISCELLANEOUS**

- 29.1 This Contract shall bind the parties to it and their respective executors, administrators, successors and permitted assigns jointly and severally and this Contract must be read and construed accordingly.
- 29.2 The parties acknowledge that the provisions of this Contract shall be in addition to any common law rights of St Hilliers. No provision of this Contract shall limit the operation or generality of any other provision of this Contract which confers any rights on St Hilliers.
- 29.3 If anything in this Contract is unenforceable, illegal or void under an applicable law then it is severed for the purposes of the application of that law in the relevant jurisdiction and the rest of this Contract remains in force.

**30 SEVERABILITY**

If any provision of this Contract is illegal, void, invalid or unenforceable, then it shall be deemed deleted from this Contract and shall not affect the validity of the other provisions of this Contract.

**31 FURTHER ASSURANCES**

Each party shall exercise all such powers as are available to it, do all such acts, matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of the Contract.

**32 SPECIAL CONDITIONS QUEENSLAND**

Where the Services are provided in Queensland, the following additional clauses apply and if there is any inconsistency between the other provisions of this Contract and the additional clauses, the additional clauses apply to the extent of the inconsistency:

- 32.1 Nothing in this Contract will affect, restrict or limit the Consultant's right to make an adjudication application in relation to a payment dispute), or suspend its Services under whichever of the *Building Industry Fairness (Security of Payment) Act 2017(Qld)* and the *Building and Construction Industry Payments Act 2004 (Qld)* is applicable at the time in question. The Consultant must notify St Hilliers immediately it becomes aware of any actions by its Secondary Consultants in relation to the Queensland Security of Payment Legislation, in particular in relation to any proposed action in relation to a statutory charge over work forming part of the Project Works.
- 32.2 Queensland Building Code
- a) The Consultant must comply with, and meet any obligations imposed by, the Queensland Government's Code of Practice for the Building and Construction Industry ("Queensland Code") and the Queensland Government's Implementation Guidelines to the Queensland Code of Practice for the Building and Construction Industry ("Queensland Guidelines") in carrying out the Services under the Contract. Copies of the Queensland Code and Queensland Guidelines are available at <http://www.justice.qld.gov.au/fair-and-safe-work/industrial-relations/codes-of-practice-and-guidelines/building-and-construction-industry-guidelines>.
  - b) For the purposes of this clause, unless a contrary intention applies, where a word or expression is not otherwise defined by this Contract, that word or phrase shall have the same meaning as attributed to it in the Queensland Guidelines.
  - c) The Consultant must notify the Building Construction Compliance Branch ("BCCB") (or nominee) and St Hilliers of any alleged breach of the Queensland Code and the Queensland Guidelines and of voluntary remedial action taken to rectify the alleged breach, within 24 hours of becoming aware of the alleged breach.
  - d) Where the Consultant engages another party in connection with the work under the Contract, the Consultant must ensure that any such engagement includes obligations equivalent to those imposed on the Consultant pursuant to this clause, including that the other party must comply with, and meet any obligations imposed by, the Queensland Code and Queensland Guidelines.
  - e) The Consultant must not appoint or engage another party in relation to the work under this Contract where that appointment or engagement would be a breach of a sanction imposed on that other party under the Queensland Code or Queensland Guidelines.
  - f) The Consultant must maintain adequate records of its compliance with the Queensland Code and Queensland Guidelines and must ensure that its Secondary Consultants, subcontractors and related entities do the same.
  - g) Notwithstanding any other provisions in this Contract, the Consultant must allow, and must take reasonable steps to ensure, the Queensland Government authorised personnel (including authorised personnel of the BCCB) are able to:
  - h) enter and have access to sites and premises controlled by the Consultant;
  - i) inspect any work, material, machinery, appliance, article or facility;
  - j) inspect and copy any record relevant to the Contract and the work under the Contract;
  - k) have access to personnel; and
  - l) interview any person;
  - m) as is necessary for the authorised personnel to monitor and investigate compliance with the Queensland Code and Queensland Guidelines by the Consultant, its Secondary Consultants, subcontractors and related entities.

- n) The Consultant must, and must take reasonable steps to ensure its related entities also, comply with any request from Queensland Government authorised personnel (including authorised personnel of the BCCB) to produce a specified document by a specified date, whether in person, by post or by electronic means.
- o) If the Consultant is in breach of the Queensland Code or the Queensland Guidelines, a sanction may be imposed. If a sanction is imposed:
- p) it shall be without prejudice to any other rights that would accrue to the parties under this Contract; and
- q) the State of Queensland (through its agencies, Ministers and/or the BCCB) may record and disclose details of the sanction imposed including the Consultant's breach of the Queensland Code or the Queensland Guidelines in relation to which the sanction was imposed.
- r) The Consultant shall comply with the Queensland Code and the Queensland Guidelines including compliance with the requirements of the Queensland Code and Queensland Guidelines under this Contract at the Consultant's own cost.
- s) The Consultant shall have no claim against St Hilliers or the Principal in connection with the Consultant's compliance with the Queensland Code and Queensland Guidelines including, without limitation, for costs, losses, expenses, damages, extensions of time or otherwise.
- t) The Consultant shall indemnify St Hilliers and the Principal against any claim, action, demand, loss, damage, cost or expense which may be brought against, or suffered or incurred by, St Hilliers or the Principal as a result of, or in connection with, the Consultant's non-compliance with the Queensland Code and Queensland Guidelines including any enforcement of requirements imposed on the Consultant under the Queensland Code and Queensland Guidelines.
- u) Compliance with the Queensland Code and Queensland Guidelines shall not relieve the Consultant of any of the Consultant's liabilities and obligations under this Contract.

**32.3 Local Industry Policy**

The Consultant must:

- a) comply with the Local Industry Policy, including, but not limited to, the principle of providing Queensland, Australian and New Zealand suppliers, contractors and manufacturers (as the case may be) with full, fair, and reasonable opportunity to tender and participate in the Project;
- b) where required by St Hilliers or the Head Contract Principal:
  - i. develop and submit to St Hilliers or the Head Contract Principal, a Local Industry Participation Plan in a form acceptable to St Hilliers in accordance with the Local Industry Policy;
  - ii. comply with the Local Industry Participation Plan, whether prepared by the Consultant or provided by St Hilliers or the Principal, in performing the work under the Contract;
  - iii. complete the Local Industry Participation Plan Outcome Report in a form acceptable to St Hilliers and provide it to St Hilliers;
  - iv. comply with all other reasonable directions issued from time to time by St Hilliers or the Principal to the Consultant with the aim of facilitating compliance with the Local Industry Policy.

**33 CAPACITY**

Where the Consultant enters into this Contract in its capacity as trustee of a trust (the Trust) (whether disclosed or not) the Consultant agrees to be bound both in its own right and as trustee of the Trust and agrees that St Hilliers has recourse to the assets of the Consultant when seeking to recover any money owing to it, whether the assets are owned beneficially or held by the Consultant in its capacity as trustee of the Trust. The Consultant represents and warrants to St Hilliers that (1) it is entitled to be indemnified out of the assets of the Trust for all liabilities incurred by it under the Contract; and (2) it has entered into this Contract for the proper administration of the Trust and for the benefit of the beneficiaries of the Trust and such entry does not conflict with the operation or terms of the Trust.

**34 PPS ACT****34.1 Registration of security interest**

- a) The Consultant acknowledges that St Hilliers may register a financing statement in relation to any security interest which arises under the Contract.
- b) The Consultant waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any such financing statement or any related financing change statement.

**34.2 PPS confidentiality**

- a) Without limiting subclause 8.5, the Consultant and St Hilliers agree not to disclose information of the kind mentioned in section 275(1) of the PPS Act, except in the circumstances required by sections 275(7) (b) to (e) of the PPS Act. The Consultant agrees that it will only authorise the disclosure of information under section 275(7) (c) or request information under section 275(7) (d) if St Hilliers approves. Nothing in this clause will prevent any disclosure by St Hilliers that it believes is necessary to comply with its other obligations under the PPS Act.
- b) To the extent that it is not inconsistent with paragraph (a) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPS Act, the Consultant agrees that St Hilliers may disclose information of the kind mentioned in section 275(1) of the PPS Act to the extent that St Hilliers is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPS Act) pursuant to section 275(1) of the PPS Act.

**34.3 Enforcement under the PPS Act**

To the extent the PPS Act allows them to be excluded, the enforcement provisions in Chapter 4 of the PPS Act do not apply to the Contract.

**34.4 Further assurances**

The Consultant must promptly do anything St Hilliers requires to ensure that its security interest is a perfected security interest and has priority over all other security interests.



**34.5 Interpretation**

If a term used in this clause has a particular meaning in the PPS Act, it has the same meaning in this clause.

**35 REPORTING OBLIGATIONS FOLLOWING ADJUDICATION**

35.1 This clause applies upon the giving of a decision by an adjudicator under the relevant Security of Payment Legislation requiring the payment of an adjudicated amount by any party (adjudicated amount).

35.2 Upon receiving payment of an adjudicated amount, the payee of the adjudicated amount must:

- a) within 10 Business Days, deliver to the payer of the adjudicated amount, copies of all financial reports and statements it has prepared or caused to be prepared (including by accountants and auditors), in relation to the payee's business within the last 12 months;
- b) within 10 Business Days of receiving a request from the payer, permit the payer to inspect and take copies of any financial records and accounts maintained by the payee; on or before each fortnightly anniversary of the date of payment of the adjudicated amount, deliver to the payer a duly executed statutory declaration, made on behalf of the payee by a director of the payee or such other person with appropriate authority (the 'declarant') which:
  - i. identifies precisely how the funds the subject of the adjudicated amount have been disbursed by the payee, including:
    - A. whether the funds remain in the payee's possession or control;
    - B. the nature of any use to which the funds have been put; and
    - C. details of any assets or things to which the funds have been appropriated including details of the registered owner of such assets or things and of any interest registered over those assets or things under the PPS Act;
  - ii. states what the payee intends to do within the next two calendar months with the funds representing the adjudicated amount paid by the payer; and
  - iii. affirms the payee's ability to make restitution of the adjudicated amount paid by the payer as at the date of the declaration and that to the best of the knowledge of the declarant, the payee will be able to make restitution of the adjudicated amount for a period of three calendar months after the date of the declaration; and
- c) within 10 Business Days of receiving a request from the payer, provide further details to the payer of any fact or matter disclosed or discovered by virtue of this clause.

35.3 In the event that the payee fails to comply strictly with the terms of this clause, the payee:

- a) hereby irrevocably consents to the payer obtaining orders, from any Court of competent jurisdiction, in the nature of injunctive relief, including mareva relief, for the preservation of the payee's assets; and
- b) acknowledges that its failure is conclusive proof of the fact that there is a real risk that the payee will dissipate its assets such that any judgment obtained by the payer for restitution of the adjudicated amount (or otherwise), will be unsatisfied.

35.4 The parties acknowledge that the purpose of this clause is not to deter any person from taking action under the relevant Security of Payment Legislation, but to ensure that restitution of any adjudicated amount can be achieved pursuant to that legislation and to thereby give efficacy to the system of rapid adjudication established by the Security of Payment legislation.

35.5 This clause shall survive termination of the Contract and shall continue to apply until the later of:

- a) if the payer fails to institute further proceedings in relation to the adjudicated amount, six months from the payment by the payer of the adjudicated amount; or
- b) if the payer institutes further proceedings in relation to the adjudicated amount within that six month period, final determination of the proceedings (including by settlement between the parties).

**36 PROTECTION OF PERSONAL INFORMATION**

36.1 The Consultant agrees in relation to the Services:

- a) subject to the specific obligations in this clause, to comply with:
  - i. the Privacy Act and the Privacy Principles, as if it were an agency as defined in the Privacy Act; and
  - ii. the Health Privacy Legislation,in relation to Personal Information;
- b) to only use Personal Information for the Permitted Purpose;
- c) to disclose Personal Information only with the prior written approval of St Hilliers (for example to an employee of the Consultant who has a need to know that Personal Information for the Permitted Purpose) and has signed an undertaking to comply with the Privacy Principles and Health Privacy Principles;
- d) not to collect, store, transfer, allow the transfer of, access to, or otherwise use Personal Information outside Australia without the prior written consent of St Hilliers;
- e) to co-operate with the Federal Privacy Commissioner in relation to the management of Personal Information;
- f) to ensure that any person allowed to access Personal Information is made aware of, and undertakes in writing to observe, the Privacy Principles as if it were an agency as defined in the Privacy Act;
- g) to comply with policy guidelines laid down by the Commonwealth or issued by the Federal Privacy Commissioner from time to time relating to Personal Information;
- h) not to use Personal Information for any direct marketing purpose;
- i) to ensure that records containing Personal Information are, at the expiration or termination of the Contract, returned to St Hilliers or deleted or destroyed in the presence of a person duly authorised by St Hilliers;
- j) to be named or identified in reports by the Federal Privacy Commissioner; and



- k) to impose an obligation on each of its Secondary Consultants in its Secondary Contracts to comply with the Consultant's obligations arising out of this clause, as if each Secondary Consultant were the Consultant (and ensure that each of its Secondary Consultants complies with such obligations in accordance with such Directions as St Hilliers may give).
- 36.2 The Consultant must immediately notify St Hilliers in writing if the Consultant:
- becomes aware of any breach, potential breach or alleged breach of any obligation under 36.1 by itself or by a Secondary Consultant, including breach of a Secondary Contract; or
  - becomes aware that a disclosure of Personal Information may be required by law; or
  - is approached or contacted by, or becomes aware that a Secondary Consultant has been approached or contacted by, the Federal Privacy Commissioner or by a person claiming that their privacy has been interfered with.
- 36.3 To the extent permitted by law, the Consultant indemnifies St Hilliers from and against any cost, damage, expense, loss, liability or claim suffered or incurred by or against St Hilliers or the Head Contract Principal including compensation to settle a complaint arising out of or in connection with a breach of this clause) to the extent caused or contributed to by a breach by the Consultant of its obligations under this clause, breach of a Secondary Consultant's obligations under a Secondary Contract as referred to above, misuse of Personal Information or disclosure of Personal Information in breach of an obligation of confidence.
- 36.4 The Consultant acknowledges that fixed cameras may be used by St Hilliers on Site to record construction activity, including for work health and safety purposes, and undertakes to St Hilliers that its employees and the employees of its Secondary Consultants consent to being filmed by those cameras. To the extent permitted by law, the Consultant shall be solely responsible for obtaining all necessary consents and agrees to indemnify St Hilliers in relation to any failure on the part of the Consultant to do so.
- 36.5 For the purpose of this clause:
- Privacy Act** means the Privacy Act 1988 (Cth) and regulations made under it any also any privacy guidelines, notices, recommendations or directions of an Authority which are notified to the Consultant by St Hilliers as applicable for the Contract;
  - Personal Information** means "Personal Information" as defined in the Privacy Act or Health Privacy Legislation, as applicable, which is collected, created or held by the Consultant in connection with the Contract;
  - Permitted Purpose** means the purposes of fulfilling its obligations under the Contract or any other purpose consented to in writing by the Consultant;
  - Privacy Principles** means the privacy principles which apply to agencies under the Privacy Act 1988 (Cth); and
  - Health Privacy Legislation** means any applicable State or Territory health privacy legislation which applies to the Consultant.
- 37 EQUAL OPPORTUNITY**
- The Consultant must:
- comply with its obligations under the Workplace Gender Equality Act 2012 (Cth); and
  - not enter into a subcontract made in connection with this Contract with any Secondary Consultant named by the Director of the Workplace Gender Equality Agency as an employer currently not complying with the Act.
- 38 WORK HEALTH AND SAFETY**
- 38.1 The Consultant must at all times:
- comply with the WHS Laws;
  - comply (and ensure that its employees and Secondary Consultants comply) with the work health and safety policy and procedures of St Hilliers and the Head Contract Principal that are in any way applicable to the Contract or the performance of the Services, including the Head Contract Principal's Drug and Alcohol policy (consumption of alcohol and use of illegal substances whilst on Site or Principal's premises is strictly prohibited), and the Site Rules;
  - comply with any reasonable instruction from St Hilliers relating to work health and safety on Site;
  - immediately comply on Site with directions on health and safety issued by any person having authority under the WHS Laws to do so;
  - communicate any issue or concern that it has regarding work health and safety matters on Site, as soon as practicable, with St Hilliers;
  - when requested by St Hilliers, provide evidence of ongoing compliance of the WHS Laws by the Consultant.
  - provide to St Hilliers, copies of all notices and correspondence issued to the Consultant by any person under the WHS Laws, within 24 hours of receiving any such notice or correspondence;
  - if the Consultant is required by the WHS Act to report a Notifiable Incident to the Regulator in relation to the Project:
    - at the same time, or as soon as is possible in the circumstances, give notice of such incident, and a copy of any written notice provided to the Regulator, to St Hilliers; and
    - provide to St Hilliers, within such time as is specified by St Hilliers, a report detailing the circumstances of the incident, the results of investigations into its cause, and any recommendations or strategies for prevention in the future;
  - inform St Hilliers of the full details of:
    - any suspected contravention of the WHS Laws relating to the Works or St Hilliers' workplace, within 24 hours of becoming aware of any such suspected contravention;
    - any workplace entry by a WHS Entry Permit Holder, or an Inspector, to any place where the Services are being performed or undertaken, within 24 hours of becoming aware of any such workplace entry; and

- iii. any proceedings against the Consultant or its officers, or any decision or request by the Regulator given to the Consultant or its officers, under the WHS Laws, within 24 hours of becoming aware of any such proceedings, decision or request; and
- 38.2 If the Consultant is required by the WHS Laws to:
- a) prepare, submit, supply or obtain any document, including a site specific safety management documentation (Site Safety Management Plan and / or 'Person Conducting a Business or Undertaking' (PCBU) compliant documentation, a risk assessment, a safe work method statement, a work method statement, an emergency plan, safety data sheets, a notice to the Regulator, or a register (together WHS Safety Documents), or review any existing WHS Safety Documents; or
  - b) obtain or sight any licence, permit, or authorisation (together WHS Licences);
  - c) specific to the Services, the Consultant must:
  - d) prepare or obtain any such WHS Safety Documents or WHS Licences tailored to the Works and in compliance with the WHS Laws; and
  - e) provide St Hilliers a copy of any such WHS Safety Documents or WHS Licences with sufficient time for St Hilliers to review the same and consult as it considers appropriate, including with the Consultant, regarding the same;
  - f) before commencing any, or undertaking further, work.
- 38.3 Without limiting any other right or remedy of St Hilliers, if during the performance of the Services:
- a) St Hilliers notifies the Consultant in writing that St Hilliers is not satisfied that the Consultant is:
    - i. performing the Services in compliance with its work health and safety obligations, relevant legislative requirement or St Hilliers' work health and safety policy and procedures, the Consultant will promptly remedy that breach; and
    - ii. St Hilliers may direct the Consultant to suspend the Services until such time as the Consultant satisfies St Hilliers that the Services will be performed in compliance with the work health and safety obligations, and during the period of suspension in accordance with this clause, St Hilliers will not be required to make any payment whatsoever to the Consultant;
  - b) the Consultant fails to rectify any breach for which the Services have been suspended under this clause within a reasonable period, but no later than 10 business days, after receiving notification from St Hilliers to do so, St Hilliers may, at its option, and without limiting St Hilliers' rights under the Contract, immediately terminate the Contract
- 39 **CHOICE OF LAW**
- a) Except in the case of laws which cannot be excluded, this Contract is governed by the laws of the Jurisdiction .
  - b) If anything in this Contract is unenforceable, illegal or void under an applicable law then it is severed for the purposes of the application of that law in the relevant jurisdiction and the rest of this Contract remains in force.
- 40 **POLICIES APPLICABLE TO SITE**
- The Consultant must ensure that all of its employees, Secondary Consultants and subcontractors comply with all policies and procedures implemented or adopted by St Hilliers from time to time relating to the Project or the Site (the "Applicable Policies") including:
- a) Site Rules;
  - b) Security requirements;
  - c) St Hilliers' drug and alcohol management policy;
  - d) St Hilliers' work health and safety policy and procedures;
  - e) any other such policies or procedures notified to the Consultant by St Hilliers from time to time; and
  - f) any manuals or other documents of the Head Contract Principal notified to the Consultant as being applicable to the Site.
  - g) St Hilliers may direct the Consultant to have removed, within a stated time, from the Site or from the Services, any person employed on the Services who, in their opinion:
  - h) is incompetent, negligent or guilty of misconduct; or
  - i) fails to comply with the Applicable Policies.
- 41 **SECURITY OF PAYMENT REQUIREMENTS**
- 41.1 If there is any inconsistency between the other provisions of this Contract and the following additional clauses, the additional clauses apply to the extent of the inconsistency:
- a) Nothing in this Contract will affect, restrict or limit the Consultant's right to make an independent adjudication application (or, as appropriate, an application to an authorised nominating authority) in relation to a payment dispute under the applicable Security of Payment Legislation (the 'local legislation'), or the Consultant's right to suspend the Services under the local legislation.
  - b) In particular, nothing in clause 24 will limit the process, operation or the timing of the application or the adjudication process under the local legislation in any way.
  - c) The Consultant must notify St Hilliers immediately it becomes aware of any actions by its Secondary Consultants in relation to local legislation, in particular in relation to any proposed action in respect of a statutory charge over work forming part of the Works.

- d) Any special condition included in the Work Relations Management Plan for the Project which is similar in effect to the previous clauses and refers to the local legislation is deemed incorporated in this Contract.

**42 Project Bank Accounts**

Where applicable, the Building Industry Fairness (Security of Payment) Act 2017 Qld shall apply to this subcontract and the Works performed under it.

**43 Government Procurement (Secure Local Jobs) Code 2019**

Where applicable, the Government Procurement (Secure Local Jobs) Code 2019 act shall apply to this subcontract and the Works performed under it.

**44 NSW Code and New South Wales Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines)**

- 44.1 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for the Building and Construction Industry (NSW Guidelines) (as published by the NSW Treasury July 2013). The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

**Primary Obligation**

- 44.2 The Consultant must at all times comply with, and meet any obligations imposed by, the NSW Government's Code of Practice for the Building and Construction Industry (NSW Code) and NSW Guidelines.
- 44.3 The Consultant must notify the CCU and the Client Agency of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- 44.4 Where the Consultant engages a SubConsultant or consultant, the Consultant must ensure that that contract imposes on the SubConsultant or consultant equivalent obligations to those in this section 2 (under the heading NSW Code and NSW Guidelines), including that the SubConsultant or consultant must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- 44.5 The Consultant must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

**Access and information**

- 44.6 The Consultant must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its SubConsultants, consultants and related entities.
- 44.7 The Consultant must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- a) enter and have access to sites and premises controlled by the Consultant, including but not limited to the project site;
  - b) inspect any work, material, machinery, appliance, article or facility;
  - c) access information and documents;
  - d) inspect and copy any record relevant to the project;
  - e) have access to personnel; and
  - f) interview any person;
- as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the contractor, its SubConsultants, consultants, and related entities.
- 44.8 The Consultant, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

**Sanctions**

- 44.9 The Consultant warrants that at the time of entering into this Subcontract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- 44.10 If the Consultant does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or NSW Guidelines.
- 44.11 Where a sanction is imposed:
- a) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - i record and disclose details of non-compliance with the NSW Code or NSW Guidelines and the sanction; and
    - ii take them into account in the evaluation of future procurement processes and responses that may be submitted by the contractor, or its related entities, in respect of work to which the NSW Code and NSW Guidelines apply.

**Compliance**

- 44.12 The Consultant bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Consultant is not entitled to make a claim for reimbursement or an extension of time from the Client Agency or the State of NSW for such costs.
- 44.13 Compliance with the NSW Code and NSW Guidelines does not relieve the Consultant from responsibility to perform the works and any other obligation under the contract, or from liability for any defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Code and NSW Guidelines.
- 44.14 Where a change in the contract or works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and NSW Guidelines, the Consultant must immediately notify the Client Agency (or nominee) of the change, or likely change and specify:
- a) the circumstances of the proposed change;



b) the extent to which compliance with the NSW Code and NSW Guidelines will be, or is likely to be, affected by the change; and  
c) what steps the Consultant proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan); and  
the Client Agency will direct the contractor as to the course it must adopt within 10 Business Days of receiving notice.

---

## SCHEDULE A

---

### **The Brief**

To carry out the activities described in Schedule B in accordance with the requirements of the Brief documents, (as they may be revised, amended, developed and added to from time to time through the design process), which documents are deemed to be included in this Brief, and in accordance with the Contract Conditions, Contract Documents, and Relevant Standards to the Project

Refer to Design Guidelines following.





St Hilliers

# Design Guidelines

GOSFORD NORTH TOWER

## CENTRAL COAST QUARTER

### Gosford North Tower

SH GOSFORD RESIDENTIAL PTY LTD

13

## Table of Contents

Table of Contents .....	2
Annexure Listing .....	2
Table Listing	3
<b>1 Development Objectives .....</b>	<b>5</b>
1.1 Design Development Process .....	5
1.2 DA Applications.....	5
1.3 Cost Plan .....	5
1.4 Cost Plan Stages .....	6
1.5 NSW Building Commission .....	6
<b>2 Design Guidelines – Overall Development Principles .....</b>	<b>8</b>
2.1 Standard of development.....	8
2.2 Unit mix .....	8
2.3 Common area provisions.....	8
2.4 Public space.....	8
2.5 Orientation of units.....	8
2.6 Lobby & enclosed circulation .....	9
2.7 Car parking .....	9
2.8 Walk-ups .....	9
2.9 Building structure .....	10
2.10 Building services.....	10
2.11 Unit Area Design Principles .....	11
2.12 Wet Areas (Bathrooms & Laundries).....	14
2.13 Building fabric .....	17
<b>3 Standard Apartment contents .....</b>	<b>20</b>
3.1 1 Bed.....	20
3.2 2 & 3 Bed .....	20
3.3 3 Bed plus .....	21
<b>Annexure A. – Design details.....</b>	<b>22</b>
- Water proofing .....	22
- Fire rating	22
- Cladding	22

## Annexure Listing

Annexure A. – Design details.....	22
-----------------------------------	----

13

## Table Listing

---

Table 1: Version Control.....	4
Table 2: Distribution List.....	4
Table 3 – proposed site mix .....	8
Table 4 – lighting provisions.....	18

Preliminary

## Version Control

Table 1: Version Control

Version Number	Date	Version Description	Approved by
0		Design stage eg 50%	

## Distribution

Table 2: Distribution List

Copy	Recipient
0	Project Manager

# 1 Development Objectives

---

- Achieve the best opportunities for the site
- Be innovative...Innovative design is a top priority of our company
- Maximise the project return. The bottom line and IRR are to be respected and design prepared to align to this primary objective

## 1.1 Design Development Process

The project team have engaged consultants including Urbis Planning and DKO Architecture to prepare the design for the Gosford North Tower. The project concept will be carried through the design development process. The concept originated from the collaborative involvement of St Hilliers, DKO and other consultants through a Masterplan design process.

The design team has tabled many different possible features and configurations and looked to innovate through creative design and land use as well as economical design solutions to keep focused on design and construction economies, which will be of key importance. The design team will also consult and examine ways to increase values through a considered mix of stock that will in turn help to maximize revenues.

BCA provisions and Fire Engineering are to be examined in review sessions early in the design phase for opportunities.

## 1.2 DA Applications

In most cases we will market the project upon release of DA approvals and it is therefore imperative that DA documentation is sufficiently resolved. DA documentation is to reflect the final design outcome. In some isolated cases we may opt to market certain stages prior to DA approval, if we believe there is benefit in doing so.

DA resolution is to include all spatial architectural, interiors, BCA, fire engineering, structural, landscape, sustainability and services provisions. There is little room for deviation from sales documentation to end product delivery in St Hilliers residential developments. We are generally contractually bound to deliver what is outlined within the DA documentation.

## 1.3 Cost Plan

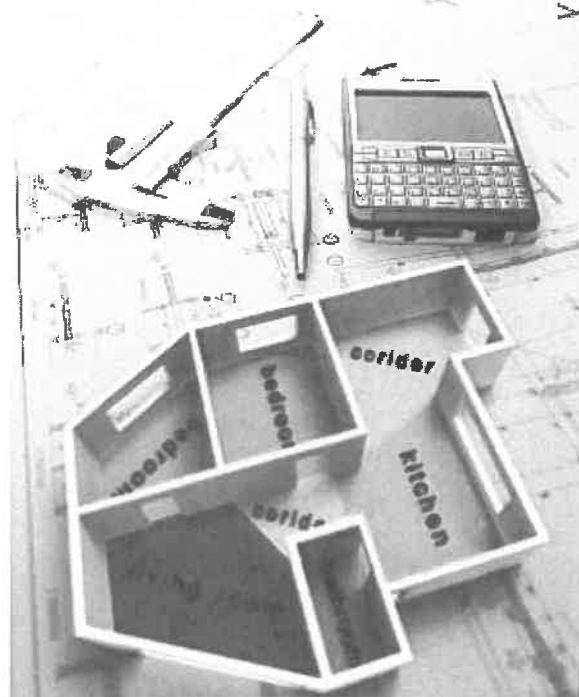
STH cost plans will be confirmed at DA stage. A full suite of details is to be provided at DA submission stage. Following the approval and prior to marketing St Hilliers will seek a final working cost plan from St Hilliers construction. This cost plan will be tested against a QS check price. In the event the price is outside +/-5% of the construction budget within the feasibility a further Design Development/ Value Management phase will be conducted to isolate areas that the design may be augmented to meet budget.

Prior to commencement of construction and in parallel with the presale campaign St Hilliers will fully tender the project in accordance with the agreed design at this stage the contracted construction price is to be +/- 2% of an independent QS, cost assessment to be awarded the construction contract.

## 1.4 Cost Plan Stages

The following are the cost plan hold points:

- 1) Pre-purchase preliminary cost-plan
- 2) Master plan
- 3) DA Initial
- 4) DA Submitted
- 5) Check Price +/-5% of independent QS cost assessment.
- 6) DA Consent – Including any provisions made for Council approval
- 7) Tender/Contract documents +/-2% of independent QS cost assessment.



## 1.5 NSW Building Commission

### Responsibilities for Design and Building Practitioners

The Design and Building Practitioners Act 2020 is applicable to this project and all Consultants, Sub and Secondary Consultants, where applicable, under this Act must be registered as a “registered practitioner”. The Act defines “registered practitioner” as including:

- registered design practitioners
- registered principal design practitioners
- registered professional engineers
- registered specialist practitioners, or
- registered building practitioners

The following now apply:

**Extended duty of care:** a retrospective duty to exercise reasonable care to avoid economic loss caused by defects in or related to a building for which the work is done. Potentially this gives apartment owners and their owners corporation a right to sue to recover rectification and temporary relocation costs arising from the discovery of a significant defect in their apartment building even where the building and the defects pre-date the Act; and

**Regulated designs:** the introduction of “regulated designs” which includes a design that is prepared for a building element or performance solution for building work (including designs for fire safety systems, waterproofing, internal or external load-bearing components, building enclosures or mechanical, plumbing and electrical services (required for compliance with the Building Code of Australia (BCA)).

KB

**Registration:** registration requirements for designers, engineers and builders;

**Design compliance declarations:** requirements for design compliance declarations from registered designers for regulated designs, including whether or not their regulated design complies with the BCA;

**Building compliance declarations:** requirements for building compliance declarations from builders, including:  
whether or not their building work complies with the BCA; and  
for a regulated design used for the building work, whether or not the design was prepared by a registered design practitioner and the building work was built in accordance with the design;

**Variations:** requirements for builders to take all reasonable steps to:  
obtain, among other things, a varied design by a registered design practitioner and a design compliance declaration in respect of variations to building work (in relation to a building element or performance solution); or  
record variations to building work (other than in relation to a building element or performance solution) from a regulated design for the building work as set out by the regulations;

**Occupation certificates and other building certificates:** the regulations are to prohibit the issue of such certificates unless compliance declarations and/or regulated designs have been provided to the issuer of the certificate;

**Stop work orders:** the Act provides for stop work orders to be issued by the Secretary of the Department of Customer Service in certain circumstances, including where the work is, or is likely to be, carried out in contravention of the Act; and

**Indemnification and Insurance:** registered practitioners must be adequately insured with respect to a declaration and work of the practitioner. The regulations may impose insurance requirements under the Act.

## 2 Design Guidelines – Overall Development Principles

### 2.1 Standard of development

The standard of development at Gosford North Tower has been determined by analysis of the market in the Central Coast area. Sales figures from competitor offerings in Gosford CBD have formed part of this market analysis. From this analysis of the market it has been determined that the prices will need to be kept low to be competitive in the market at Gosford North Tower. This dictates that stock will have to be of a standard that will support low costs but remain true to St Hillier's quality standards. Despite the need to keep costs low, innovation in building methods and design will aim to produce durable and appealing stock that represents value for money in the market

### 2.2 Unit mix

The Gosford North Tower design team have carefully taken into account the type of stock which is likely to sell. Past area sales have been a key indicator of which types of stock are in demand. There will be range of 1, 2 and 3 bed apartments across the site at Gosford North Tower

Table 3 – proposed stage mix

Type	Int.m2	Unit m2	%mix	Starting from \$	\$/m2
1 bed	50-55	tba	20%	\$400,000	(8000/m2)
2 bed	75-90	tba	70%	\$600,000	(8000/m2)
3 bed	95-150	tba	10%	\$800,000	(8000/m2)

### 2.3 Common area provisions

Normally, Ground Floor townhouses or apartments will get dedicated front or rear terraces. The podium to the east and south of the apartment building will be a landscaped communal area that will provide outdoor living space within the complex. Additionally the lower tower roof will also contain communal outdoor dining and amenity.

### 2.4 Public space

Public space and through site links will be generously provided in Stages 2 and 3. Given the tight nature of the first stage site there is no Public Space in the North Tower.

### 2.5 Orientation of units

Living spaces to North to maximise solar access, with the aim of focussing apartment blocks with potential views west to the Leagues Club park and beyond to the Brisbane waters. Views should also be sought to Point Frederick peninsula where possible from the east facing apartments.

KB



There should be a 6m minimum windows to avoid cross viewing. Another consideration in unit orientation is the proximity of bedrooms to sources of noise,

Cross flow ventilation through units are expected, even though air conditioning is standard in these dwellings

The unit design is to be SEPP 65 compliant as a minimum principle.

Mountain and Water views are to be considered in the apartment design and orientation.



## **2.6 Lobby & enclosed circulation**

Enclosed common areas account for GFA and constitute area that is not salable, overall the objective prevails to minimise the ratio to 7% to be on a par with St Hilliers high-density residential development objectives. Therefore, lobby spaces will be kept to a minimum.

## **2.7 Car parking**

The roller shutter carpark entry is to be opened via proximity device integrated with a key fob to allow the roller shutter to be operated via push button (as opposed to swipe style access). The integrated proximity device will also provide access to the lobby and provide lift access.

The proximity device/key fob needs to be easily re-programmable if a card/fob is lost. This functionality will be internet-accessible remotely via the provision of an appropriate PC and monitor located in the Building Manager's Office (if there is no Building Manager's Office, then located in the Communications Room in the car park area). The PC will be loaded with the access system software and connected to the internet via an internet socket adjacent to the PC.

Consistent access control systems are to be used across each stage to promote standardisation.

In the event a fire shutter is required, the fire shutter will not be used as the roller shutter used by residents on a day to day basis. In this scenario, two shutters are required – the fire shutter and the standard roller shutter.

On street car parking – Due to the parking congestion that already exists in Gosford, there is to be no reliance on street parking for this development.

Apartment car parking – to fall between council DCP and RMS rates and a minimum of 1 space per 1 and 2 bedroom units, 2 spaces per 3 bedroom unit, 1space per SOHO and 0.14spaces per apartment for visitors. Commercial rates are 1 carpark per 50m2 of GFA.

Storage for each unit will be supplied within the unit and parking space allowances for each apartment.

Minimum height of parking is to be determined by code.

## **2.8 Walk-ups**

Walk-ups will have an entry at street level. Ground floor is to be accessible by ramps and from podium level in accordance with DDA legislation.

KB

## 2.9 Building structure

- Where possible columns are to run the full height of the building to avoid transfer slabs
- Transfer slabs are to be simple preferably of a flat plate design., as forming Beams and set downs and upturns is an extremely slow process, it is better to sacrifice additional concrete to allow speed of construction
- The preference is for the design of the perimeter basement walls is to allow for back filling prior to the pouring of the ground slab and them reaching their design strength, eg by utilising a back propping system, or CFA piles and shotcrete walls.
- The use of Dintel for water tanks is not allowed.
- The use of precast vertical elements, concrete, formtube or similar is encouraged for speed of construction.
- Façade is to simplified to eliminate out of sequence works.

## 2.10 Building services

### 2.10.1 Lift Access Units

All units are to be provided with lift access in these buildings. Lift access is to include basement levels and car parking

Waiting times of lifts, quality of lift ride, service and finish to be of medium to high quality.

### 2.10.2 Fire Engineered Solutions

Fire Engineered solutions are to be investigated as soon as possible in the design development stage leading up to DA submission. The types of engineering to be investigated may include reduced fire stair or egress provisions. Extended travel distances to egress points.

### 2.10.3 External Finishes

For external finishes our preference is for prefab or drywall to be standard due to speed of construction. Wall areas (non-glass areas) will have an allowance of 20% of façade costs for architectural enhancements. e.g. Metal or timber cladding.

Aluminium composite panels are not to be used and the use of other composite panels, for example EQUITONE is discouraged.

Where glazed walls are to be used there is a preference for panelised stick build over curtain wall. Curved external walls are to be avoided.

### 2.10.4 Security

Security in residential units is to be studied carefully to ensure adequate safety for residents and their property. Pedestrian and car access is to be analysed by a suitably qualified consultant to ensure zoning of residents and general public accessible zones are isolated.

Building and surrounds (incl basement) are to adopt CPTED design principals.

### 2.10.5 Intercom

Digital systems only to be used for intercom. The level and zones requiring security are to be developed with the input of the Development Manager and are often project specific.

### **2.10.6 Air Conditioning**

St Hilliers will be providing air conditioning to all apartments. St Hilliers however, still requires good design incorporating passive qualities of solar orientation, solar access and cross-flow ventilation to minimise or even negate the necessity for its use..

Our required standard is to install 1 x condenser and 1 x head end AC unit for each 1 and 2 bed unit, (\$3000/unit) and 1 x condenser and 2 x head end AC units for each 3 bed apartment.

Consideration to be given to installing provision during construction to the living and additional bedroom. Outdoor condenser units are to be located in screened condenser farms located generally at the core. The preference is to locate these farms on every 2<sup>nd</sup> level or where this is not possible, at every level.

### **2.10.7 Services Risers**

Services risers configuration is to be arranged to allow vertical passage of riser without off-sets. Riser size may vary at each level to suit architectural requirements however there is to be a common plate footprint configuration between each level. The architect is to indicate a box with a cross inside to indicate the common size of the riser running through all levels.

### **2.10.8 Downpipes**

Downpipe placement is to be considered carefully. Planning between the hydraulic consultant and architect should provide a result that does not detract from the appearance of the building. These are to be thought of early to ensure that they receive due consideration in the design. Downpipes to be external to the building envelope

### **2.10.9 Box Gutters**

Inclusion of box gutters is to be avoided. Eaves gutters are preferred as they drain to the building perimeter.

## **2.11 Unit Area Design Principles**

### **2.11.1 Circulation Space**

- Unit interiors are to be planned carefully. Unit areas are often tight and we have to provide maximum areas of useable space. Corridor lengths within units are to be kept to a minimum.
- Width of circulation space within units is to be minimum 1m.

### **2.11.2 Furnishings**

- Standard furniture items are to be used in unit space planning.
- Bedrooms:
  - Queen size bed
  - 2 Bedside tables
- Living room:
  - Coffee table
  - Lounge (2 or 3 seater)
  - Arm chair
  - Credenza with television
- Dining area:

- Rectangular table (4 or 6 seats)

- These have been incorporated as the minimum (including Fonzie Flat if applicable) designs.

### 2.11.3 Living / Dining Areas

- Living areas are to be combined with dining areas. 4,000mm minimum width to living space. 3,000-3,500mm minimum width to dining area.
- Combined living and dining areas are to be 5,300mm across.
- Living areas are to be oriented to the North with good solar access.
- Furniture layout to demonstrate sufficient space for required furniture.



### 2.11.4 Kitchens

- Kitchens generally are to be kept as standard compact units. Open-ended units are preferred to negate the need to custom make to site measure, with useable GPO's to both island and wall benches
- Height is 2,100mm to give most cost effective result.
- Hinges and drawer runners need particular attention to ensure that the systems used remain cost effective but durable and of a reasonable quality. Soft close hinges and runners are to be used.
- Provisions vary depending on unit type. Generally, all to have a row of overhead cupboards, under-bench or tall pantry space and concealed refrigerator space. A single stack of drawers (450 or 600 wide).
- See section 3 for the descriptions for typical provisions.
- Range hoods are to be an externally exhausted type for standard product types, ensure that there is provision in ceiling for ductwork. Overhead cupboard bank is to be coordinated with the location of the cook top to allow placement of fan over.
- Recessed flush lighting is to be incorporated in underside of overhead cupboards. Where there are to these lights, allowance for double bottom shelf in overhead cupboards to allow for the cable runs..
- Adequate space (300mm min.) adjacent to hot plates and sinks is to be provided where they abut walls and other in bench features.
- Island benches with sinks are to be avoided as stacking of units will necessitate the inclusion of acoustic treatment and bulkheads below.
- Ideally the sink will be located in the bench against (300mm min. off) a wall with an adjacent riser to allow connection of waste pipe running within the kicker zone.
- Single bowl sinks and single dish drawers may be provided in 1 Bed and 1+Study units.
- Double bowl sinks and single dish drawers in 2 Bed units.
- Double bowl sinks and double dish drawers in 3 Bed units.
- 1,100mm clearance to be provided between benches in kitchens.

KB

- Bench tops to be 600mm wide as standard. Benches may be 650mm or wider depending on the base product width. The products will come in large sheets that are to be cut down to widths with a minimum of wastage.
- Finishes are to be project specific.
- The following are finishes that have been used successfully in our developments:
- Stone or reconstituted stone bench top (20mm thick). A fit for purpose letter is to be provided for stone bench tops noting that the supplier warrants the product for the intended use without a maintenance regime.
- 2 Pack Polyurethane finish HMR particleboard doors
- White Melamine carcass interiors on HMR particleboard.
- Brushed aluminium laminated kicker
- Tiled floor to kitchen area
- Ceramic Tiled splashback
- Handles to full height cupboards only. Under bench and overheads to have rebated finger grooves.

### **2.11.5 Entry**

- Unit entry areas are to be arranged so that you do not enter directly onto living areas (exception being fonzie flats). Niches are often used at unit entries off lobbies to define unit entry door areas. This is to avoid the creation of straight runs of corridors as in hotel examples. Unit entries are to be offset from access stairs and lift doors.

### **2.11.6 Storage**

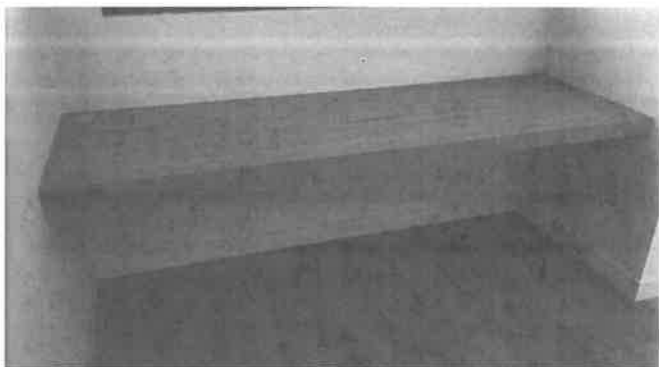
- Each unit is to get a minimum storage area 600x450mm with shelving and full height sections. This is to be a joinery item with polyurethane finish flush panel door to match adjacent wall colour.
- Alternatively there will be storage supplied within the allocated car park space allowed for each unit, as previously detailed.
- Storage is to meet ADG requirements at a minimum

### **2.11.7 Linen Closet**

- Each unit is to get a linen closet min 300mm deep, width varies min 800mm with shelving. This is to be a joinery item with polyurethane finish flush panel door to match adjacent wall colour.

### **2.11.8 Study**

- Studies have been considered and are likely to be included in 1, 2 and 3 bed apartments. Media alcove 600mm x 1,100mm x 650mm deep where applicable is to be provided in each unit or as required by the Development Manager. Finish to top will be dictated by development manager, top to be laminate. Media alcoves are not to be placed in standard width hallways within units. Niches are to be created typically allowing sufficient circulation space around someone seated at the desk.



- No media alcoves provided in this design

## 2.11.9 Bedrooms

- Bedrooms are to accommodate Queen size beds as standard.
- Bedroom provision is standard to allow a minimum 1.2m at the foot of the bed (ie 3m long).
- Where achievable, width across the bed head is preferred to be 3300mm for Bed 1, 3,200mm for Bed 2 and 3,100mm for Bed 3 (however Min 3,100mm)



### 2.11.10 Robe Length & Width

- Each bedroom is to have a built in robe with sliding mirrored doors or HMR particleboard with polyurethane finish. Where possible these are to be 2m long minimum. The width dimension to be allowed for is 650mm to outside face of doors.
- 3 bed town houses and units may have WIR's adjacent to the master bedroom. The spatial arrangement of the unit will normally determine implementation of this arrangement.
- All robes to have joinery drawers and hat shelf 500mm wide with hanging rail below. Hanging rail to have offset fixing to allow it to sit centrally within the robe space.

## 2.12 Wet Areas (Bathrooms & Laundries)

### 2.12.1 Basic Design Criteria

- To be kept to a minimum floor area. Wet area costs 5 times that of normal habitable space.
- Discourage the use of concealed cisterns as correct finishes detailing is often expensive and difficult to achieve. The exception may be made if joinery units are utilized without tiling over. Budget allowances and unit standard will prevail here.

### 2.12.2 Laundries

- Laundries are to use standard arrangement tubs in 'Skinny Minni' axis.
- Provision for laundry rooms of laundry niches will depend on the market requirement. Standard niche arrangements are not to use bi-fold doors as detail resolution.
- Doors are to be flush joinery type with finish to match adjacent wall finish.
- Minimum size for laundry niches is 1,200mm x 800mm.
- Minimum size of laundry rooms is 1,800mm x 1,800mm.
- Tiling to be restricted to a 300-400mm band around the tub (2 sides) and taps behind washing machine.
- Water proofing is required to total floor area and tiled area behind tub. The use of polyurethane products is not allowed without written permission from St Hilliers Group Design Manager or Quality Compliance Manager.

- Floor wastes to be included if local authority will not allow the use of 'Shut-off Valves'.
- Ensure that the wall where the Dryer is to be mounted on is fully plywooded

## 2.12.3 Provision of Bathrooms

- Ensuites to be provided to 2 Bed units and larger.
- Walls to be sheeted underneath baths and waterproofing to continue under.
- Ensuites will have large showers (nominally 1,400mm long) equivalent to bath proportions.
- Semi Frameless Shower screens are to be used. Shower screens finish below ceiling and do not fix to ceiling.
- Vanity basin benches are between 1,500mm and 2,500mm in length. Cupboard space only with shelf in under bench arrangements (drawers are more expensive).
- Vanity basins are to be used to help create branding for the development. Selection should be made carefully as it will be an item featured heavily in the promotional material related to the project.
- Double towel rails, soap holders to showers, coat hooks to rear of door and toilet roll holders are to be provided as a minimum. The selection of these is to be project specific and considered to be a project branding element.
- Powder rooms may be provided to larger units with 2 levels. Provision will be dictated by the Development Manager. Fixtures contained are wall hung vanity basin and WC pan. The room will have floor tiling and nominal wall tiling.
- Water proofing is required to total floor area, full height around the shower, to at least 600mm above bath and sink. The use of polyurethane products is not allowed without written permission from St Hilliers Group Design Manager or Quality Compliance Manager.



## 2.12.4 Finishes & Substrates

- Full height tiling for all bathrooms. Villaboard or appropriate material to be used as substrate.
- Waterproofing of shower recesses to continue to ceiling. 2400mm ceiling height to be achieved.
- The use of structural set-downs are provided in wet areas is preferred over localized depressions only at waste points. Tiled finish is bedded to fall to waste from threshold angle under door. (30mm setdown to wet areas may be a requirement for 'Universal Housing') Set down is preferred, however not if formwork needs to be set down. Engineer bathrooms set downs to ensure flat plate formwork is used. Set downs must also be cast with falls to wastes and finished with steel trowel..
- Mirrors are to be as wide as vanity units (1,100mm nom.) and extend from vanity splash-back to 100mm below ceiling. Edge details are to be allowed for. These may be a simple silver frame or a stainless steel angle.
- Tiling sizes to be managed to allow full tile to finish into ceiling. Tiles also to finish full down onto top of bath. Cuts to be isolated to perimeter floor area. More than half a tile module to remain here. The use of tiles any larger than 300mm x 300mm to be discouraged due to lipping whilst trying to

KB

achieve falls. If larger tiles to be insisted upon then consideration must be given to using a strip drain with falls in a single plane.

### 2.12.5 Size of Bathrooms

- Bathroom sizes as noted above should be kept to a minimum.
- Typical arrangements including WC Pan (850mm wide space), Vanity Unit (1,100mm long), space to shower screen (100mm nom.) and shower recess (900mm wide) give 2,950mm long bathroom configuration. This combination requires a minimum width of 1,400mm.
- These examples are simple rectangles in plan. More efficient arrangements are often found when fixtures are placed on opposing walls containing niches formed by planning features such as risers. These arrangements should be carefully examined during initial space planning of units.

### 2.12.6 Balcony Areas

- Apartment balcony provision is to be adjacent to living space. A minimum width of 2m is to be provided to allow outdoor furniture to be used adequately. Townhouses and Garden apartments will have ample outdoor and balcony space. Hob details at internal/external threshold enable flat slab soffits. Glass doors and windows to full floor to ceiling zone adjacent to balconies (Subject to BCA).
- Balconies will be a flat panelised system with handrail. See note under external finishes under section 2.10.3.
- Ceramic tile floor finishes will be adopted.
- Balcony overflows to be detailed with simplicity of construction in mind along with aesthetic appeal.
- Areas of balcony adjacent to living areas are nominally 10m<sup>2</sup> minimum (generally minimum ADG + 20%)
- Balcony areas are to be provided with waterproof single GPO's. No cold water taps are to be provided on balcony areas in the standard product as this necessitates the inclusion of a waste to connect to sewer.
- Water proofing is required to total balcony area including upturns as required by code or at least 100mm. The use of polyurethane products is not allowed without written permission from St Hilliers Group Design Manager or Quality Compliance Manager.



### 2.12.7 Ground Floor Step Threshold

- Steps in structure ranging between 150-300mm are to be provided at ground floor internal to external areas. No ground floor areas to carry from internal to external without step. Hob only details on flat slabs will not be allowed.



## **2.13 Building fabric**

### **2.13.1 Floor to Floor & Ceiling Height**

- 3,100mm standard floor to floor with 200mm structural zone to achieve 2,700mm ceiling height to northern living spaces.
- Ceiling heights generally at 2,700mm for living spaces and 2,400mm for wet areas.
- Bulkheads at 2,400mm with recessed downlights.
- SEPP 65 and ADG to be used as a minimum criteria for apartment heights.

### **2.13.2 Fixtures and fittings**

- Where gab rails are to be installed on non-masonry walls 18mm plywood is to be used as follows:
  - From floor to 150mm above the height of the rail,
  - Extend at least 150mm either side of the fixture.
- Noggins of at least 18mm ply are to be used for all other fixtures
- The use of stainless steel screws is required to all wet areas.
- No plastic fixings are to be used anywhere.
- All screws must penetrate to at least  $\frac{3}{4}$  depth of the noggin ply. If the fixings that are supplied will not allow for this then alternate fixings are to be used.
- Entry door hardware to be of good quality hardware, Lockwood or similar.

### **2.13.3 Internal finishes**

- Bedrooms are to be carpeted
- Living areas are to be tiled. The use of timber look products (ie those of a timber veneer on MDF not allowed without written permission from St Hilliers Group Design Manager or Quality Compliance Manager). Engineered timber floors can be provided as an optional extra
- Wet areas are to be tiled.
- Entry foyer is to be tiled.
- Common corridors are to be carpeted with a quality product preferably carpet tiles.

### **2.13.4 Cornice & Skirtings**

- Square set Cornice to high level ceiling areas only. Skirting free detail to be adopted, normally to HMR particleboard. Allowance for 90mm coved cornices to be incorporated

### **2.13.5 Stairs**

Stair provision within units. Ideally the unit arrangement will place living area at the lower level and Bedrooms upstairs. This allows a configuration of open riser stair being perceived as transparent within the living space.

### **2.13.6 Doors & Door Frames**

- Semi Solid core doors are to be used. 2,040x820x35mm, wider on accessible units

NB

- Door heights to suit 2,400mm bulkheads throughout. Door width is to be maintained at 820mm. No 720mm doors are to be used in St. Hillier's residential developments. Openings to be compliant with DDA legislation (clear for universal)
- Doors are normally hollow core it is discouraged to fix anything on the doors eg rob hooks as crossbars rarely end up where rails or hooks are located. If this is a necessity then consider the use of solid block doors.
- Frame details are to be designed to ensure good corrosion protection for wet area door frames. Commercial or domestic frame profiles have been used in St Hilliers developments. Plaster to be set flush to door jambs

### 2.13.7 Electrical Switch Plates

- STH electrical switch plates to differentiate our development projects. This sets a precedent for future developments and such elements are to be selected on a project by project basis.
- Provision of GPO's, data and telephone outlets is to be shown provision in each unit mix type on a room by room basis. Don't forget GPO's in common areas for cleaners , etc. See section 3 for a guide as to the requirements for each space.

### 2.13.8 Lighting

- St Hillier's have designed lighting schemes for the residential developments as this assists project branding. Designers are to provide project specific designs.
- Lighting to be compliant with the requirements of the BASIX report
- Balcony areas will be provided with soffit or wall surface mounted fittings.
- As noted above, lighting within units is normally limited to recessed lights in bulkhead areas and kitchen cupboards and surface mounted bayonets in set ceiling areas.
- Lobbies and other front of house common areas will have specialist lighting designed by the lighting consultant.
- Taking previous residential developments as an example the following table provides a quick reference for unit lighting provisions:

Table 4 – lighting provisions

Unit Type	Recessed Downlights	Bayonets
Studio / 1 Bed / 1Bed + Study	8	5
2 Bed / 2 Bed + Study	11	8
3 Bed	13	9

### 2.13.9 Landscaping

- The landscaping is to be designed to meet the minimum requirements of any Master Planning guidelines
- Landscaping should be of low maintenance with irrigation systems.

- Where possible external planter boxes should not be designed against unit walls. If this is unavoidable then a double block wall and waterproofing is the preferred method of construction.
- Drainage cells should be used in the planter beds and not cover the drainage points.
- Acrylic waterproof membrane is not suitable of use in planter boxes.
- Landscape lighting will be designed by the lighting consultant in conjunction with the landscape architect. The selection should be made carefully and sparingly as external fixtures are expensive. The lighting design consultant should propose proprietary made fixtures for an economical and designed response.



### 3 Standard Apartment contents

#### 3.1 1 Bed

Room	Requirements – Spatial	Power and data
<b>Kitchen</b>	Min. 3370mm L to include:  1x 450W 4 drawer 1x 460W under bench pantry 1x 800W fridge (not supplied) 1x single bowl under counter sink 1x 600W x 450H oven with large drawer under 1x 600W gas cooktop 1x 600W single dish drawer with large drawer under 1x 80H rangehood	1 double GPO by cook top and 2 double GPO to island bench if there is one. Power for each of the appliances, eg over, cook top, fridge, dishwasher and microwave. Phone point.
<b>Bathroom</b>	Min. 2700mm L with exposed cistern (750+100+850+1100).	1 double GPO
<b>Bedroom</b>	1x queen size bed 2x side table 400x400	2 double GPO's, either side of bed
<b>Media Alcove</b>	1x media chair  1x media desk 1200-1400x600 (60mm gap along rear)	2 double GPO's by TV location, to include MATV point as well
<b>Living Room</b>	1x 900x450 coffee table  1x 2 seater sofa 1800W x 850D 1x armchair 1x credenza with television 1800W x 550D	2 double GPO's by TV location, to include MATV point as well
<b>Dining</b>	1x 1400x750 dining table 4x dining chair	1 double GPO

#### 3.2 2 & 3 Bed

Room	Requirements – Spatial	Power and data
<b>Kitchen</b>	Sink in island bench min. 2100mm L x 750mm W  island to include: 1x 450W 4 drawer 1x pots / pans 2 drawer 1x 460W full height pantry 1x 800W fridge (not supplied) 1x double bowl under counter sink 1x 600W oven	1 double GPO by cook top and 2 double GPO to island bench if there is one. Power for each of the appliances, eg over, cook top, fridge, dishwasher and microwave. Phone point.

Room	Requirements – Spatial	Power and data
	1x 600W gas cooktop 1x 600W single dish drawer with large drawer under 1x 80H rangehood.	
<b>Bathroom</b>	Min. 2700mm L w/ concealed cistern (750+100+850+1100)	1 double GPO
<b>Ensuite</b>	Min. 2850mm L w/ concealed cistern (900+100+850+1100)	1 double GPO
<b>Bedroom</b>	2 x queen size bed 4x side table 400x400	2 double GPO's, either side of bed
<b>Media Alcove</b>	1x media chair	2 double GPO's by TV location, to include MATV point as well
	1x media desk 1200-1400x600 (60mm gap along rear)	
<b>Living Room</b>	1x 1200x600 coffee table	2 double GPO's by TV location, to include MATV point as well
	<u>Option A</u> 1x 3 seater sofa 2400x1000, 1 armchair 900x850	
	<u>Option B</u> 1x 3 seater sofa 2400x1000, 2 armchair 900x850	
	<u>Option C</u> 1x 2 seater sofa 1800Wx850D, 2 armchair 900x850	
	1x credenza with television 1800W x 550D	
<b>Dining</b>	1x 1800x1000 dining table	1 double GPO
	6x dining chair	
	<u>Option</u> 1x side table 1800x350	

*Please note: No loose furniture or furnishings are included in the cost plan*

### 3.3 3 Bed plus

See Development Manager for specification

## **Annexure A. – Design details**

---

### **- Water proofing**

For detailing purposes to wet areas St Hilliers has currently adopted the Master Buildings Association Waterproofing Guides. Any deviation from this is to be agreed in writing by St Hilliers Group Design Manager or Quality Compliance Manager.

### **- Fire rating**

For Certification of fire penetrations evidence of compliance with all of AS4072.1 including the recommendations of AS 4072.1 Appendix B.

### **- Cladding**

When choosing the makeup of the façade extreme care needs to be taken when choosing suitable products. The performance of the product, especially its fire rating, must be taken into account. Claims made by suppliers need to be verified by the Fire Engineer and Certifier.

Aluminium Composite Panels (ACP's) and composite timber panels such as Biowood are not to be used under any circumstances.

Ref

## SCHEDULE B

### SCOPE OF SERVICES

The scope of works includes the following for North Tower - 26 Mann Street Gosford:

#### DELIVERABLES

##### General

Deliverables include:

- Site set-out plan (showing all dimensions, pavement types etc). 1:500,
- Site analysis drawing (to council and St Hilliers requirements). 1:100,
- GA Floor plans of all levels. 1:200,
- GA Elevations of all walls. 1:200,
- GA Sections. 1:200,
- Waterproofing drawings (extent of). 1:200,
- Tile layout drawings, 1:100, 1:50, 1:20,
- Floor plans of all levels. 1:100, 1:50,
- Elevations of all walls. 1:100, 1:50,
- Roof plans. 1:100,
- Sections. 1:100, 1:50, 1:20,
- Stair sections 1:20, 1:50
- Wet Area plans and details. 1:20, 1:50
- Wall plans and details. 1:10, 1:20, 1:50
- Wall sections and details. 1:10, 1:20, 1:50
- Internal elevations. 1:20, 1:50, 1:100,
- Detail plans / elevations. 1:10, 1:20
- Construction Details 1:5, 1:10, 1:20
- Theming Diagrams and Elevations. 1:20, 1:50, 1:100,
- Tenancy base plans (for all retailers or tenants). 1:50
- Furniture layout diagrams. 1:100, 1:50,
- General detail sheets as appropriate. 1:5, 1:10, 1:20
- Column and Transitions set-out details. 1:10
- Slab set out drawings including setdowns and penetrations. 1:100,
- External Hardscape drawing and spot levels. 1:200,
- Vehicular and pedestrian ramp drawings. 1:20,
- AREA Schedule Summary on the front drawing sheet showing GBA, GFA, NLA measured in accordance with PCA guidelines. 1:200,
- Windows, Doors Signage, Louvres, Panels and the like setout drawings,
- Any drawing to adequately describe the extent of trade specific scope of works.
- Signage layout for internal and external including vehicular routes (in consultation with traffic eng).

- Safety design for all access requirements including maintenance/ rooftop/ façade.
- Detailed drawings for joinery, screens pergolas etc
- Statutory Signage
- Marketing Drawings

1:20/1:50

**TECHNICAL SPECIFICATIONS**

## d) General

## Deliverables include:

- Door and hardware Finishes Schedules.
- Internal Finishes Schedules.
- External Finishes Schedules.
- Finishes board external
- Finishes board internal
- Technical specification for all trades. To be prepared as a detailed response to project and coordinated with sub consultants. Generic specifications will not be accepted.
- Assessment of disabled access reports provided by St Hilliers and their incorporation into the design.
- Assessment of BCA reports provided by St Hilliers and their incorporation into the design.
- Preparation and submission of monthly report to St Hilliers confirming total design compliance (brief, program, statutory and contract compliance.)
- Windows, Doors, Signage, Louvres, Panels and the like setout schedules,
- Assessment of reports related to Section J /Basix and the like and their incorporation into the design.

**SCOPE OF WORKS**

## e) General

## Deliverables includes:

- Assume role of lead Coordinating consultant in the production of documentation and the development of schemes for assessing the projects feasibility
- Prepare design and support documents in accordance with brief, statutory requirements, program and budget, St Hilliers to be informed in writing should the design or expected delivery deviate from the agreed parameters.
- Attend all relevant design/ client/ construction meetings including those on site as required.
- Ongoing assessment of Design vs Construction cost (in association with St Hilliers).
- Present scheme where required to all relevant stakeholders.
- Prepare trade package sets of documents for tender (pre AFC) and construction stages (AFC documents).
- Be expertly aware of BCA requirements, keep staff educated and ensure deliverables represent a compliant or performance based solution for building and surrounding site.
- Be expertly aware of safety in design principles, keep staff educated and ensure deliverables represent sensible and safe response for construction contractors, tenant, maintenance staff and any other user of the building and surrounding site.
- Be expertly aware of disability design principles, keep staff educated and ensure deliverables represent sensible and user-friendly response for all disabled users of the building and surrounding site.



- Clearly note any changes in documents using new revision number for each change on the drawings and clouding or tracked changes in any document. Each change is to be accompanied by a separate design change report.
- All Requests for Information (RFI) to be responded to within 24 hours of receipt, unless agreed otherwise;
- All drawings, work shop drawings, sample submissions etc to be reviewed and commented on within 5 days unless agreed other wise;
- All documents to be provided in soft copy. Soft copy in PDF and ACAD/CAD and PDF 2013 dwg format.
- Use of project collaboration software to be allowed for. St Hilliers currently use TeamBinder, however reserve the right to change.
- Prepare design program for all stage delivery of documents
- All documents to be provided in both hard and soft copy. Soft copy in PDF and ACAD format. Hard copy if required.
- Preparation and submission of monthly report to St Hilliers for confirming total design compliance (Brief, Program, Statutory Compliance).

f) Concept

Deliverables include:

- Prepare a Concept Design for the project describing and including:
- Site development principles with a maximum of 3 layout options for feasibility analysis and staging
- Car parking and delivery requirements and strategy
- Review infrastructure requirements including services and utility easements
- Develop 3D building envelope / massing studies to demonstrate appropriate fit, environmental context, aspect and solar impact
- Preliminary presentation and discussion with relevant Authorities as part of the design process
- Identify areas of non-compliance with current Planning Controls to be incorporated in the Concept Design
- Seek St Hilliers written approval to proceed to the next stage.

g) Development Application (DA)

Deliverables include:

- Assume role of lead Coordinating Consultant in the production of documentation and the development of details for this phase of the project
- Attend and input design meetings as called by St Hilliers of other consultants.
- Attend meetings with the Consent Authority to evaluate statutory requirements.
- Review of the Master Plan and Brief to incorporate necessary amendments
- Prepare and keep updated a building AREA Schedule of the current DA design reconciled against the Feasibility Designs
- Develop options for providing the optimum solution and design, and document all elements that need architectural design in order to achieve a DA including the finalisation of the land use, densities and yields and 3D massing studies
- Incorporate Structural and Services Consultants advice in the design where considered appropriate by St Hilliers
- Prepare plans and Co-ordinate all other consultants advice and requirements and be responsible for ensuring the advice is incorporated in the drawings and specifications including Structural,



Services, BCA, Survey, Civil, DDA, Landscape, Arborist, Energy Efficiency, Traffic, Acoustic, Bushfire Management, ABGR, Greenstar and any other consultants details.

- Attendance and participation in pre DA submissions, value management, cost planning etc
- Prepare a Finishes Schedules and describe the project and materials in sufficient details for the cost Planner / Contractor to prepare preliminary cost estimates.
- The internal, external finishes and FF&E schedules for this and all subsequent stages shall include all areas including but not limited to:
  - All external elements
  - All apartments
  - Vehicle parking and access ways
  - Common areas including common retail areas
  - The level of finish for cold and warm shell fit outs
- Excluded is the design and documentation for any retail tenancies
- Provide Architectural specifications and appropriate notes on drawings to address all issues required by council
- Provide the necessary CAD and PDF plans and sections to St Hilliers and other consultants, at no cost. 1:50, 1:100
- Produce and provide the necessary hard copies of DA drawings and base specifications and any other relevant documents to the Authorities satisfaction. This will include coloured sets of drawings in the format and sizes required by the Authority.
- Attend council/authority meetings as required
- Items as required by the DA checklist
- Building safety review of all disciplines will be undertaken in the DD/CC phase
- Detailed Marketing Drawings will be required following DA submission. This will be fully coordinated with the Development Manager.
- Advise on areas of statutory non-compliance where a Fire Engineered solution may be required and in conjunction with the BCA consultant prepare a brief to meet these non conformances.
- Track the approval process and attend meetings with the relevant Authorities. Report on any matters that are identified during the determination process that could assist in expediting the determination process.
- Make presentations to the relevant Consent Authority. Special presentation material including new brochures and reports will be the subject of a separate Agreement.
- Report on any conditions imposed upon the Determination of the Development Application, in
- Seek St Hilliers written instruction to proceed to next stage

h) Design Development and Construction Certificate

Deliverables include:

- Attend and input design meetings as called by St Hilliers or other consultants.
- Assume role of lead Coordinating Consultant in the production of documentation and the development of details for this phase of the project
- Prepare a checklist related to development conditions and nominate sub consultants required to provide support material. Co ordinate response to statutory consent authority and PCA.
- Attend design meetings, contribute and assist in the resolution of options and details. Design Meetings will generally be conducted on site.
- Produce and keep updated a building AREA Schedule of the current design reconciled against the DA Design
- Attendance and participation in, value management, cost planning discussions etc
- Develop options for providing the optimum solution and design, and document all elements that need architectural design



- Incorporate and coordinate BCA, Structural, Services and all other Consultants advice and requirements in the design.
- Provide Co-ordinated trade specifications and/or appropriate notes on drawings to satisfy any approval authority
- Provide the necessary CAD and PDF plans, sections and details to St Hilliers and other consultants, at no cost. 1:10, 1:20, 1:50, 1:100
- Prepare and maintain a safe design. Consideration is to be given to the construction process and safety of end user including all maintenance requirements
- Incorporate client required sustainability objectives and confirm that they are delivered as part of the final design.
- Building safety review of all disciplines incl attendance of Safety in Design Workshop
- Prepare plans, sections and elevations of the Project Buildings to the required Design Development format, suitable for "sign-off" by the Client. The level of detail shall be to the standard required to obtain a Construction Certificate. Once signed off Prepare Construction Certificate Documents in sufficient detail to demonstrate compliance with the relevant Regulations and for issue to the appropriate Certifier. Documents shall include plans, sections, elevations, outline specification, relevant details, schedules and reports typically required for Construction Certificate. 1:10, 1:20, 1:50, 1:100
- Prepare area and finishes schedules and preliminary indicative details of building envelope elements in sufficient detail for the Cost Planner to prepare the Cost Plan
- Integrate the services of the relevant Consultants (including structure and building services) into the architectural documents.
- Track the certification process and report on progress.
- Attend meetings with the Certifier / Authorities to assist in the issue of a Construction Certificate.
- Prepare documents sufficient to call Design and Construct tender for the works including preliminary plans, sections, elevations, specifications, schedules and reports normally required to this phase.
- Assist in the tender negotiations and the compiling of documents for issue to prospective contractors.
- Seek St Hilliers written instruction to proceed to next stage

i) Approved for Construction (AFC) Documentation

Deliverables include:

- Attend and input design meetings as called by St Hilliers or other consultants. Design Meetings will be held on site.
- Incorporate structural and services subcontractors/ consultants detailed design into construction documentation.
- Develop the Design Development Documents to completed Design Documents in accordance with the agreed Project Brief, Area Schedules and Cost Plan.
- Provide "Approved For Construction" documentation and amendments as required by St Hilliers by updating the base drawings and delivering to site as required, as required by St Hilliers.
- Issue all documentation with a revised drawing/document register
- Attendance and participation in, value management, cost planning discussions etc
- Contribute to resolving construction details, attend meetings and inspections on site as required by St Hilliers.
- Provide certification in the form required by the PCA, Council and St Hilliers in the form required.
- Prepare plans, sections and elevations of the Project buildings to a Design Documentation format at 1:200 or 1:100 as appropriate, suitable for "sign-off" by the Client. The level of detail shall be to the standard required to obtain a Construction Certificate.



- Prepare Area and Finishes Schedules and preliminary indicative details of building envelope elements in sufficient detail for the Cost Planner to prepare the Cost Plan
- Prepare and maintain a safe design. Consideration is to be given to the construction process (need for scaffolding to be minimised) and safety of end user, tenant and occupant.
- Incorporate client required sustainability objectives and confirm that they are delivered as part of the final design.
- Building safety review of all disciplines
- Seek St Hilliers written instruction to proceed to next stage

j) Site Construction Phase Works

Deliverables include:

- Attend and input site meetings when called by St Hilliers.
- Upon receipt of a copy of the Construction Certificate, provide "Approved For Construction" (AFC) documentation amendments as required by St Hilliers, update base drawings and deliver to site as required, as required by St Hilliers.
- Issue all documentation with a revised drawing/document register
- Contribute to resolving construction details, attend meetings and inspections on site as required by St Hilliers,
- Shop drawing review, approval and timely turnaround of Structural Steelwork, Post-tensioning, Precast, Tilt-up Concrete, Joinery and any other elements to be reviewed to be within 5 days unless agreed otherwise.
- All Requests for Information (RFI) to be responded to within 24 hours of receipt, unless agreed otherwise
- All shop drawings processed and returned to site within 48 hours of receipt, unless agreed otherwise
- Site inspections to satisfy all statutory, authority and Head contract requirements for certification.
- Carry out monthly inspections and provide a written report on the quality and progress of works, including design compliance and certification with each report. (if required)
- Prior to Practical Completion inspect the works and report on the general works compliance with the architectural documents and design intent.
- The Certificate of Practical Completion shall be issued by the Project Manager.
- Following the issue of the Certificate of Practical Completion, issue final "for Construction" documents which shall serve as record documents and as to be issued as 'as built' documentation for incorporation into the handover manuals.
- Provide Inspection Certification in the form required by the certifier or council for Certificates of Occupancy
- Building safety review of all disciplines
- Provide a comprehensive defects list prior to Completion

k) Defect Works

Deliverables include:

- Carry out an initial defects inspection of the works identifying defects visible at the time of the inspection and conduct a second inspection, should it be required to confirm that the defects have been rectified.
- Provide architectural advice as required during and at completion of the Defect Liability Period.

New apartment development comprising approximately 145 sole-occupancy units, over 24 levels with on grade parking,

The apartments shall be a mix of one, two and three bedroom unit types and it is assumed that generally the same apartment types shall be used across the whole project. The fees allow for a maximum of six apartment types, including adaptable apartments,

Local Government Area of Central Coast Council (DPIE Consent Authority),

The design shall aim to achieve:

A Liveable Housing Design rating of 'Silver Level',

Minimum 10% of the units to be adaptable housing (as defined by AS 4299),

Design to be in accordance with the requirements of:

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development.

The project encompasses the following stages ;

Concept Design

Development Application

Submission of Electronic Model to Consent Authority, if required.

Interior Concept Design

Marketing Plans

Tender Documentation

Construction Documentation

Construction Phase Services

Defects

Additional project stages that may be required that DKO can assist with are:

Display Suite

Tenancy Fit-out and Guidelines

Wayfinding signage

Public Art review

These shall be the subject of separate service proposals.

In terms of timing, the proposal and fees are based on all key consultants being engaged during Concept Design.

---

**Stage 1                      Concept Design ;**

Scope includes;

Review Statutory Approval framework including Consent Authority requirements, in conjunction with advice received from the Planning Consultant,

Provide input to the preparation of briefs to other consultants which shall include throughout the project (but is not limited to):

- Planning Consultant
- ESD and BASIX Consultant
- Accessibility Consultant
- Structural Engineer
- Geotechnical Engineer
- HVAC Engineers
- Fire Engineer
- Traffic Engineer
- Hydraulic Engineer
- Acoustic Engineer
- Landscape Architect and Arborist
- Principal Certifying Authority (PCA)
- Safety in Design Consultant

Undertake an analysis of the site constraints.

Prepare schematic design option/s for the site.

The presentation will include the following information:

- Architectural proposal, in sketch or CAD form, or a combination thereof as appropriate to convey the scheme options.

- Assessment of pros and cons of any option presented.

Respond to queries as they are raised to enable client to confirm the preferred concept option.

Assessment and advice on consultants' preliminary recommendations.

Production of schematic Plans, Elevations, Sections at 1:100.

Production of indicative 3D Imagery.

Attend pre-DA meeting with Council, including presentation of the preferred concept option.

## **Stage 2                      Development Application (DA) Package ;**

Scope includes;

- Review pre-DA meeting feedback.

- Develop the preferred concept option, using furniture layouts, elevations, streetscapes, sections and 3D imagery, to enable client and consultants to provide advice on the scheme.

- Provide information to the consultant team to enable them to complete the Development Application documentation.

- Incorporate advice/reports from the consultant team into the design as required and confirm design compliance/non-compliance against relevant statutory requirements

- Establish necessary external materials and finishes for Development Application

- Supply information as required to Planning Consultant and review their Statement of Environmental Effects (Lodgement of the DA package and all liaison with Consent Authority shall be by the Planning Consultant).

- Finalise with the Planning Consultant the compliance table for inclusion in the Statement of Environmental Effects

Review and assess the scheme for SEPP65 and Apartment Design Guide compliance  
Develop the schematic design to DA submission standard. Documentation for this stage includes :

- Floor Plans, including furniture layouts at 1:100 scale
- Elevations at 1:100 scale
- Streetscapes at 1:100 scale
- External finishes , materials and colour palettes
- Shadow diagrams
- 'Eye of the Sun' Diagrams (if required)
- 3D / Perspective Photomontages (up to 2 for Authority submission purposes only)
- Adaptable Apartment Plans
- SEPP65 and Apartment Design Guide assessment and Architectural statement of compliance
- GFA diagrams and table

**Stage 2b          Submission of Electronic Model to Consent Authority (if required)**

Preparation of an electronic 3D building model and refinement of it in accordance with Council Submission standards criteria.

Conversion of data to format compatible with Council requirements.

Should a model be requested at any other stage the fee will be charged on a per submission basis as required.

**Stage 3          Interior Concept Design;**

Scope includes;

Establish the interior design concept relevant to the project's locale and demographic, including:

- Look & Feel imagery
- Precedent imagery
- Indicative finish palette

Develop the interior design of the apartment, including:

Joinery items including:

- Kitchen
- Bathroom / Ensuite
- Laundry
- Robe
- Storage
- Study

Testing of the design in 3D and 2D Photoshop elevations

Develop 2 x Apartment Colour Schemes

Develop the interior design of the public areas, including:

Lift Lobbies

Ground Floor Apartment Corridor

Apartment Corridor

Apartment Entry

Mailbox design

Testing of the design in 3D and 2D Photoshop elevations

Develop Finish, FF&E and Lighting Schedules

#### **Stage 4                      Marketing**

*Prepare marketing plans for the development comprising (Included in base scope):*

*Individual plan layout for each typical apartment type (25 apartment types allowed for),*

*Overall floorplate plan for each level of the project (10 floorplate plans allowed for),*

Provide a briefing document for the client-engaged visualiser to assist in their production of the 3D photomontage visualisations (briefing material to be utilised from the Interior

Design Package),

Provide a review and commentary at key stages of the 3D visualisation process for visualiser to incorporate (i.e. example of key review points - camera setup, materials setup, entourage inclusions, lighting, final draft.),

Provide Schedule of Finishes, Fittings & Equipment for marketing purposes (based on Interior Schedules produced for Interior Stage),

Liaison and with Model Maker (3 meetings allowed for),

Attend briefing meeting with Sales and Marketing team (3 meetings allowed for)

Note: Preparation of marketing photomontage visualisations to be undertaken by client- engaged Visualiser.

#### *Deliverables ;*

*Marketing Apartment Plans (1 plan per each typical apartment type). Where multiple apartments in the same building share the same type, unit Level and number will be listed on one plan,*

*Marketing Level Floor Plans (1 plan per level per building),*

Provision of interior finishes samples for both Apartment Interior Schemes. Layout and design of boards by DKO, with assembly/construction by Display Suite building

contractor,

Provision of exterior finishes samples. Layout and design of boards by DKO, with assembly/ construction by Display Suite building contractor.

#### *Exclusions ;*

Graphic Design associated with Sales Plans and Marketing material.

#### **Stage 5                      Tender Documentation, including interiors;**



It is assumed that the Building Contract shall be 'Design and Construct' Arrangement. The level of documentation to be provided for Tender is 70% of the overall documentation package.

Scope includes;

Production of the following documentation sufficient for tendering purposes:

- Overall Site Plan
- Dimensioned General Arrangement floor plans at 1:100 scale
- Elevations and Sections at 1:100 scale
- Reflected Ceiling Plans at 1:100 scale
- Partition Set-out Plans at 1:100 scale
- Wall Types Details at 1:10 scale
- Exterior Finishes Schedule
- Handrail / balustrade details
- Concept sunshade details
- Details e.g. sliding door / balcony relationship detail, bathroom floor (at door)
- Document the approved Interior Concept Design (Stage 3) including:
  - 2 x Kitchen Types at 1:20 scale
  - 2 x Bathroom/Ensuite Types at 1:20 scale
  - 1 x typical Robe at 1:20 scale
  - 1 x typical Store/Linen at 1:20 scale
  - 1:50 Typical joinery details at 1:10 scale
  - Door threshold Details
  - Interior Finishes Schedule
  - Fixtures Fittings & Equipment (FFE) Schedule
- Reviewing and responding to RFI's receiving from the Project Manager during Tender Process (typical 4 week tender period assumed.)
- DKO undertakes internal reviews to produce its own Safety in Design Report.

DKO recommends the engagement of a Safety Consultant to lead Safety in Design workshop/s with all consultants and to compile on overall Risk Assessment Matrix for the project.

## **Stage 6                      Construction Documentation;**

Scope includes;

- Review of PCA's Construction Certificate (CC) requirements.
- Attendance to CC items and completion of documentation sufficient for obtaining CC.
- Completion of Tender Documentation for Construction:
  - Finalise documents and all general arrangement plans, elevations and sections, together with appropriate details and schedules to enable the project to be submitted for Demolition and Certification.
  - Finalisation of General Arrangement Plans Sections & Elevations.
  - Reflected Ceiling Plans.
  - Partition Setout Plans.

Concrete Setout Plans (for major penetrations >150mm dia. only).

Stair & Core Details.

Façade Sections.

Finalisation of External Finishes Schedule.

Completion of Interior design documentation including wet areas, joinery, finishes and fittings selections.

Co-ordination with secondary consultants' outputs with architectural outputs. The Builder is to ensure any D&C subcontractor information is provided in a timely manner so as to minimise re-documentation. Should D&C subcontractor information require significant redesign/redocumentation work, we may need to seek additional fees associated with this work.

## **Stage 7 Construction Phase Services**

It is understood that the client will have a representative managing the construction process, undertaking Contract Administration and site superintendence, which are excluded from DKO's services. Fees for this stage are based on the assumption that construction shall be complete within

18 months following commencement on the stage. Should the construction period be longer than this our fee may need to vary.

Scope includes;

Liaison with builder / clarification of documentation.

Attendance at monthly site meetings. 15 hours/month of site visits is allowed for, over an assumed build period of 12 months maximum. Should services be required for a period that exceeds this, these shall be charged according to our schedule of hourly rates or additional lump sum to be agreed.

Checking of shop drawings, for conformance with architectural design intent only.

Review and approval of samples and prototypes relating to architectural documentation as requested.

Respond to Builder RFI's.

Clarification of construction details, if required.

Provision of SEPP65 Certificate, if regular site visits undertaken throughout the whole of construction phase.

## **Stage 8 Defects**

Scope includes;

1 x Initial inspection of each typical apartment and common area.

1 x Return inspection, if required.

## **Phase 1a – Display Suite Concept**

- Site visit to review existing building shell.
- Analyse, prepare and present a concept layout of the display suite – allowance for 4x layout options. Layout to include:
  - Reception
  - Waiting Area
  - Model Table

- Marketing zone
- Apartment display
- BOH
- Presentation material may include precedent imagery, sketches, Photoshop elevations
- Liaison with client group, consultants and building team

**Phase 1b - Display Suite – Design Development & Documentation**

- 1:50 General Arrangement Plan
- 1:50 Reflected Ceiling Plan – design intent
- 1:50 Partition Plan
- 1:50 Electrical Plan – design intent
- 1:50 Internal elevations
- 1:20 Joinery drawings, 1:10 Sections, 1:2 details
- Schedules
  - Finish Schedule
  - FF&E Schedule
  - Lighting Schedule
  - Furniture Schedule

**Phase 1c – Display Suite – Tendering and Pre-construction and CDC**

- Liaison with certifier re. CDC (to be engaged by client)
- Shop Drawing Review
- Respond to Tender/contractor queries/RFI's

**Phase 1d – Display Suite – Construction Phase (hourly rates)**

- Respond to Contractor queries/RFI's
- Site attendance as required – Maximum 4 visits (Including styling visit)

## SCHEDULE C

### SPECIAL CONDITIONS

The following suggested special conditions have been included in addition to the standard template in case they may be relevant, especially for government contracts.

If a clause is not relevant, please delete it. (2) Also, insert any additional special conditions required by the Head Contract, or desirable for consistency with it. (3) If no special conditions are required (this would be unusual), insert 'Nil'

#### **SC 1 AVAILABILITY, AUDIT AND ACCESS**

- a) Without limiting any of its other obligations under this Contract, the Consultant must:
  - i. at its cost, keep complete, accurate and up to date records including books of account, time sheets, invoices for materials, final accounts and any other documents or papers which:
    - A. show all detail in relation to the Services;
    - B. comply with applicable Australian Accounting Standards; and
    - C. are maintained in a form and manner that facilitates access and inspection under this Special Condition;
  - ii. retain those records for 7 years from the date of substantial completion for the Services;
  - iii. provide St Hilliers with copies of such of documents relating to or affecting the Services as either may require;
  - iv. participate in internal or external audits under the Contract at the frequency and in relation to the matters specified by St Hilliers for the purpose of ensuring that the Contract is being properly performed and administered.
- b) The Consultant must promptly take, at no additional cost to St Hilliers, corrective action to rectify any error, non-compliance or inaccuracy identified during an audit in the way the Consultant has:
  - i. carried out the Services; or
  - ii. calculated any progress claim, or any other amounts or charges billed to St Hilliers arising from the Services.
- c) St Hilliers will: give the Consultant reasonable notice of an audit except where notice is not practicable or appropriate including:
  - i. responding to a regulatory request with shorter notice; or
  - ii. investigating theft or breach of contract;
- d) The parties agree and acknowledge that:
  - i. unless specified otherwise in this Contract, each party must bear its own costs of any audits;
  - ii. subject to paragraph (c), participation in, audits does not in any way reduce the Consultant's responsibility under the Contract.
- e) The Consultant must give St Hilliers all access required by St Hilliers to exercise its audit rights under the Contract, including:
  - i. answering all reasonable questions; and
  - ii. making available any of the Consultant's Secondary Consultants, employees and agents for interviews with St Hilliers or any nominated persons; and
- f) The Consultant must ensure that any subcontract entered into with a Secondary Consultant for the purpose of performing the Services contains an equivalent clause granting the rights specified in this Special Condition with respect to the Secondary Consultant's premises, data, records, accounts, financial material and information and those of its employees, agents or sub-consultants.
- g) The Consultant agrees that each of the Commonwealth Auditor-General, the Auditor-General, the Privacy Commissioner or any delegate. has the right to:
  - i. access the premises of the Consultant or its Secondary Consultants;
  - ii. require the provision by the Consultant of records and other information which are related to the Contract; and
  - iii. access, inspect and copy documentation and records or any other matter relevant to the Contract, however stored, in the custody or under the control of the Consultant.
- h) The Consultant must provide sufficient information to St Hilliers to enable St Hilliers to assess whether the Consultant continues to be a going concern including:
  - i. promptly providing St Hilliers with its audited financials; and
  - ii. providing St Hilliers with at least 5 business days' notice of events that could reasonably affect the solvency of the Consultant, including:
    - D. the filing of court proceedings by or against the Consultant; and
    - E. the crystallisation of the contingent liabilities or bank guarantees of the Consultant.



- i) In addition, the Consultant must as Directed by St Hilliers:
  - i. provide a statement of solvency (in the form required) to be made available to the Head Contract Principal; and
  - ii. make its financial representative available to provide St Hilliers, the Head Contract Principal or their agents with financial information and documents (including internal monthly management accounts), answer questions, co-operate with and do everything necessary to assist for the purpose of demonstrating that the Consultant has the financial viability necessary to perform the Services and otherwise meet its obligations under this Contract (including the payment of all Secondary Consultants).

**SC 2 MEETINGS AND WORKSHOPS**

- a) Project Start-up/ Design kick off meeting

The Consultant must, on request from St Hilliers, attend the Project Start-up Workshop to review Project requirements, introduce team members, set ground rules, discuss options with local staff and promote a team working environment for the ongoing management of the Project.

- b) Design Meetings

The Consultant must meet with St Hilliers and the Superintendent fortnightly unless alternative arrangements have been agreed in advance.

The purpose of the meeting is for the Consultant to keep all parties fully informed about the progress made to fulfil the design deliverables and any issues requiring attention. The meetings will be conducted by conference call, video conference or by attendance at the Consultant's offices or the site.

- c) Site Meetings

The Consultant must attend such Site meetings as St Hilliers may from time to time request.

- d) Presentation Meetings

The Consultant must attend presentations of completed documentation to the Head Contract Principal's technical authorities at St Hilliers' reasonable request.

Documentation prepared by the Consultant for that meeting (where relevant) must be issued by the Consultant to St Hilliers for review at least ten (10) Business Days prior to the presentation.

**SC 3 MOTOR VEHICLE INSURANCE [only where required under Head contract]**

SC 3.1 Before commencing the Services, the Consultant must effect and maintain (or cause to be effected and maintained):

- a) insurance for not less than \$20 million for any one occurrence which covers third party property loss or damage related to any plant or vehicles (registered or unregistered) used in respect of the Services and in relation to unregistered vehicles, third party injury, illness or death; and
- b) compulsory third party motor vehicle insurance.

The insurance must be maintained until the expiry of the last defects liability period under the Head Contract.

**SC 4 SECURITY**

- a) The Consultant must, and must ensure that each of its Representatives:
  - i. complies with all existing security arrangements relating to the performance of the Services on site;
  - ii. make itself fully familiar with the requirements of the SAFE BASE Alert State System (SAFE BASE), if applicable to the Site,
  - iii. attend any security briefing and participate in any rehearsal of SAFE BASE as requested or Directed by St Hilliers or the Head Contract Principal from time to time, and
  - iv. when using the Site, complies with all reasonable directions issued by St Hilliers or the Head Contract Principal in relation to security.
- b) The Consultant must ensure that any person (including any of its Secondary Consultants) the Consultant proposes to carry out work or perform duties under the Contract and who will be required, while carrying out some or all of that work or performing some or all of those duties, to:
  - i. enter secure areas on the site;
  - ii. work with the Head Contract Principal's personnel for extended periods;
  - iii. have access to, or be responsible for the physical custody of, official, classified, sensitive or commercial information, or documents or valuable assets belonging to the Head Contract Principal or a third party; or
  - iv. hold a particular kind of security clearance the details of which have been notified to the Consultant by St Hilliers,
  - v. does not carry out that work or perform those duties unless authorised to do so by St Hilliers.
- c) The Consultant must provide, and must ensure that any Representative provides, to St Hilliers, in the form required by St Hilliers, such information as St Hilliers from time to time reasonably requests for the purpose of allowing St Hilliers or the Head Contract Principal to undertake reasonable security checks.

**SC 5 PANDEMIC SPECIAL CONDITIONS**

SC 5.1 In this Agreement.

- a) "Pandemic" means the disease known as the Covid-19 virus or any other disease that have been, or may be, declared to be a pandemic by the World Health Organisation.



- b) **"Pandemic Disruption Event"** means any disruption which has an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Consultant's Activities caused by or related to the Pandemic, which occurs prior to Substantial Completion.

SC 5.2 If the Consultant considers that there has been a Pandemic Disruption Event, which may affect the Consultant's Activities and/or the Works, it must promptly give St Hilliers notice in writing, together with detailed particulars of the following;

- a) the actual disruption which has had an adverse effect on the supply of labour, equipment, materials or services required for the carrying out of the Consultant's Works caused as a direct result of the Pandemic and full details of the adverse effect;
- b) the likely duration of the disruption;
- c) any measures the Consultant's proposes to deal with the consequences of the Pandemic Disruption Event which must as a minimum include details of the steps that the Consultant will take to:
  - i. avoid, mitigate, resolve or to otherwise manage the relevant effect of the Pandemic Disruption Event; and
  - ii. minimise any additional cost to the St Hilliers in respect of the Pandemic Disruption Event

SC 5.3 If the Consultant proposes any measures to deal with the consequences of the Pandemic Disruption Event in accordance with clause SC 5.2(c) or otherwise:

- a) St Hilliers may, at its absolute discretion, direct the Consultant to adopt any or all of the measures proposed by the Consultant.
- b) The parties agree that any Direction given in accordance with clause SC 5.3(a) is not a Direction to vary the Consultant's Activities and/or the Works.
- c) St Hilliers is under no obligation to adopt the Consultant's proposed measures.
- d) The Consultant has no entitlement to make a Claim in relation to any measure taken or not taken to deal with the consequences of the Pandemic Disruption Event.

SC 5.4 Clause 16.4 of this Agreement is amended with the addition of the following:

"In the event of:

- a) force majeure,
- b) Pandemic Disruption Event; or
- c) default or delay on the part of the Consultant,

affecting the Construction Program, the Consultant's Activities or the Works, St Hilliers may suspend, vary the timing, order, sequence or manner of undertaking the Consultant's Activities or the Works and the Consultant shall have no Claim in respect thereof."

SC 5.5 For the avoidance of doubt:

- a) the parties agree that the Consultant must comply with any measures imposed by the Client or Clients Representative, and St Hilliers Management Plan and Procedures in respect of a Pandemic Disruption Event at the Consultant's own cost;
- b) the requirement to comply with any measures imposed by the Client or Clients Representative, and St Hilliers in respect of a Pandemic Disruption Event shall not constitute a variation to the Consultant's Activities and/or the Works or entitle the Agreement to an EOT;
- c) any Direction given by St Hilliers in relation to a Pandemic Disruption Event is not a Direction to vary to the Consultant's Activities and/or the Works;
- d) the Consultant has no right to make any Claim against St Hilliers in relation to compliance with any measures imposed by the Client or Clients Representative, and St Hilliers in respect of a **Pandemic Disruption Event**.

SC 5.6 The Consultant warrants and represents to St Hilliers that:

- a) the Contract fee covers the Consultant's costs and risk of, and related to, any Pandemic Disruption Event; and
- b) it will make no Claim against either St Hilliers or the Head Contract Principal in relation to the Pandemic, including in complying with any measures imposed by the Client or Clients Representative, and St Hilliers in respect of a Pandemic Disruption Event.

SC 5.7 The Consultant acknowledges that St Hilliers relies upon the warranties and representations contained in clause SC 5.6 in deciding to enter into this Agreement.

SC 5.8 In the event of any inconsistency between the terms in clause SC 5 and any other term of this Agreement, clause SC 5 prevails.

## SCHEDULE D

*(definitions of 'Fee', Clauses 2, 12.2, 17.2 and 18.2)*

### FEES AND EXPENSES

1) Expenses to be reimbursed (if any):

N/A

2) Fees and charges to satisfy Legislative Requirements payable by St Hilliers (if any):

N/A

3) Fees: \$1,066,900 plus GST as below

#### Stages

The Services are staged. The Consultant's Fee is made up of lump sums for each of the following stages:

The stages for the delivery of the Services and the Fee:

Stage	Commencement Date	Date for Substantial Completion	Fee for each Stage (not including GST)
DA	1/10/2020	20/12/2020	200,000
IPC Determination	TBA	TBA	75,000
Design Development / CC	TBA	TBA	362,000
AFC	TBA	TBA	120,000
Interiors	TBA	TBA	40,000
Marketing	TBA	TBA	45,000
Construction Phase	TBA	TBA	170,000
Defects / DLP	TBA	31/12/2025	15,000
<b>Display Suite</b>			
Concept	TBA	TBA	12,000
Design Development	TBA	TBA	18,000
Tendering	TBA	TBA	9,900
Construction	TBA	TBA	Hourly Rates

Time Charge for Variations:	
Level of Task	Rate per hour (not including GST)
Director	\$320
Architectural Graduate	\$120

## Progress claim structure

All progress claims must be submitted in a format the same as the following table

No.	Contract Works Items	Contract Value	% Complete to date	Amount Complete to date	Amount Previously Claimed	Amount This Claim
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						





---

## SCHEDULE E

---

### **Contract Design Program**

Refer Design programme following.

[illegible]

NB

## SCHEDULE F

### Design Control Plan

#### *PROCEDURES FOR CONSULTANTS*

All consultants must follow the procedures listed below:

1) Document Size, System and Software

St Hilliers will use an electronic document management system on this project. The consultant must also use The Project Document Management System. This will include the consultant corresponding electronically via The Project Document Management System and loading of drawings and documents into the system and printing drawings from the system. Training, equipment compatibility and familiarisation with The Project Document Management System is the responsibility of the Consultant. St Hilliers will assist in training and program setup.

Unless otherwise agreed with St Hilliers, all drawings shall be for A1 size reproduction. All drawings will be produced on AutoCAD, the release version to be agreed with St Hilliers, and uploaded to The Project Document Management System. A PDF copy of each drawing must also be uploaded to The Project Document Management System. All specifications will be for A4 size reproduction. All specifications will be produced on Microsoft Word and uploaded to The Project Document Management System along with a PDF version.

2) Document Numbering

Documents shall be individually and uniquely numbered, and sub coded by a number or alphabetical letter when revised. Drawings must conform to the following revision numbering sequences –

Revision numbers

- numerically (ie 01 to 99) for drawings up to “For Design Development” stage
- alphabetically (ie A to Z, then AA, AB etc) at “For Construction” stage

Due to the implementation of electronic file management on this project, control of drawing titles as they relate to a drawing number is critical. If a change to a drawing warrants a change to the drawing title, then it must be assigned with a new drawing number.

Similar restrictions are placed on changing drawing numbers.

The following drawing numbering codes are to be used, either AAX### or AX###, where “A” is a letter of the alphabet, and # is a numeral, X is either a numeral or letter.

3) Document Revisions

Revisions shall be readily identifiable e.g. by clouding around altered section or other appropriate method agreed with St Hilliers.

A drawing revision document shall be issued by the consultant detailing:

- Brief description of the revision
- Reason for revision e.g. client requested design variation, development design co-ordination, approval authority requirement, builder or trade contractor request, or other reason (specify).
- Nominated consultant's signature

4) Document Registration

All consultants shall maintain a document register comprising:

- title of document;
- latest revision number; and
- to whom the document has been issued.

The document register held by each consultant for this design is to be updated continuously. A copy of the relevant section of the document register shall be issued with revised documents. Each consultant is responsible for updating and cross referencing their documents / registers against St Hilliers and other Consultants document registers.

A transmittal form must accompany each delivery of documents (or discs) to St Hilliers.



**5) E-mail Procedures**

In order to maintain document control, a strict e-mail procedure must be maintained as follows: If a consultant sends either drawings or specifications to St Hilliers via e-mail then a Transmittal Form, showing details of the e-mail transmission and the updated Document Register must also be uploaded to The Project Document Management System

**6) Document Coordination**

St Hilliers Design Manager shall have responsibility to manage the day-to-day coordination of the consultants during the design process.

It is the responsibility of each consultant to distribute revisions of their documents to each of the other consultants whose work may be affected.

Full set distribution: A full set of documentation from each consultant shall be distributed to each of the other consultants for coordination, when directed to do so by the St Hilliers Design Manager. This will be at 50%, 70% and 90% stages, as a minimum, but may occur at other times.

**7) Design Control Meetings**

All consultants' representatives must attend Design Control Meetings unless advised otherwise by the Design Manager.

Meetings are to be held weekly (unless advised otherwise) and will be chaired by the St Hilliers Design Manager. Note: The Project Manager may replace the Design Manager as chairperson of weekly meetings at a later stage in the project.

Minutes are to be kept by the Chairperson and distributed promptly to all consultants. Minutes will confirm directions given in meetings and specify actions required by consultants or others, and the date by which these actions are required.

**8) Client Communication**

All communication with the client is to be through the St Hilliers Design Manager, unless otherwise agreed with the St Hilliers Design Manager.

**9) Verbal Communication**

Consultants are encouraged to communicate freely and frequently with each other, with approval authorities and with St Hilliers Design Manager.

Consultants are to maintain a record of relevant verbal communications, noting points discussed and/or concluded. Copies of relevant verbal communication records should be forwarded to the Design Manager, and / or tabled / reported at Design Control Meetings.

**10) Consultants Programs**

St Hilliers Design Manager will prepare a base program for the design process and will distribute it to consultants for review. Consultants must confirm their ability to meet the key dates, or request program amendments. Consultants should provide their own programs, consistent with St Hilliers base program, if requested to do so. The Consultants own programs shall be status and updated as requested by St Hilliers.

**11) Documentation Flow**

Consultants shall distribute, review, amend and reissue drawings in the normal course of the design process. St Hilliers may issue any such drawings to the client or to trade contractors for review.

**12) Fit for Purpose Letter**

St Hilliers may require a Fit for Purpose Letter to accompany each set of documents from each consultant. This letter will set out the consultant's:

- approach to the design
- How its design has fulfilled the requirements of the Brief
- An explanation of any alternative solutions proposed
- Confirmation the design has been reviewed as 'fit for purpose' in accordance with the Brief

**13) Verification by consultants**

Prior to issuing a document / drawing to St Hilliers for approval, all design consultants shall have their designs reviewed within their own organisations, in accordance with their own Quality Assurance procedures, to verify that their design output meets the design input requirements.



**14) Certification**

Certification confirming design compliance or intent of design compliance with all relevant legislation, standards, codes, Authority requirements, and BCA is required from each consultant to accompany the Construction Certificate/ Building Permit.

Certification confirming Construction works comply with all the above is required upon Practical Completion of the project.

## SCHEDULE G

(clause 18.3(a))

### CONSULTANT'S STATEMENT REGARDING WORKERS COMPENSATION, PAY-ROLL TAX REMUNERATION AND OTHER MATTERS- ALL STATES AND TERRITORIES

(Director, Company Secretary or authorised employee of Consultant to complete)

This declaration must be completed for all projects, wherever situated. See Form B02g for Word version

Consultant (full name)

Note: the name must be of a legal entity (person, company, partnership or trustee of a trading trust). A business name or trading name is not sufficient. ABN or ACN must be completed.

ACN/ ABN

Project No.

Note: If the Consultant is acting as trustee for a trading trust, must ALSO insert name and ABN of Trust:

Trust, ABN

This statement is made on behalf of the Consultant pursuant to a contract with ST HILLIERS PROPERTY PTY LTD (ABN 66 082 729 039) for the Project (the 'Contract').

This Statement relates to: (complete as appropriate)

(1) the period covered by Payment Claim No. \_\_\_\_\_ OR

(2) work between the dates \_\_\_\_\_ and \_\_\_\_\_

Where the Consultant has engaged agents, subcontractors or Secondary Consultants, this Declaration also confirms that the Consultant has received a written statement by each of those persons/legal entities in relation to the period referred to above, confirming compliance by them with the matters referred to in this Declaration. If this is not correct, provide full details of the situation at the end of this form.

References in this Declaration to 'Secondary Consultants' include all sub-contractors and agents to the Consultant in relation to the Project/Contract. References to NSW legislation should be read as references to equivalent legislation in the State or Territory in which the project is located.

#### DECLARATION: I hereby state that:

##### 1. Workers Compensation

- (1) ☐ The Consultant is not required to have workers' compensation insurance (ie is a sole trader or partnership, without directors, employees, agents, Consultants or Secondary Consultants, not required to hold workers compensation insurance) OR
- (2) The Consultant is required to have workers' compensation insurance and  
A. ☐ has not B. ☐ has  
paid all workers compensation insurance premiums payable, in respect of work done in connection with the Contract, during any period of the Contract and has and will maintain in force valid workers compensation insurance, policy \_\_\_\_\_ (Policy Number) held with \_\_\_\_\_ (Insurance Company) as indicated on the attached copy of a Certificate of Currency dated \_\_\_\_\_

##### 2. Payroll Legislation

- (1) ☐ The Consultant is not required to be registered as an employer under Pay Roll Legislation, OR
- (2) The Consultant is required to be registered as an employer under Pay Roll Legislation, and  
A. ☐ has not B. ☐ has  
paid all pay-roll tax due in respect of employees who performed work under the Contract as at the date of this statement and is registered as an employer under Pay Roll Legislation (Pay-roll tax client No.) \_\_\_\_\_

##### 3. Remuneration, Superannuation and Security of Payment legislation

- (1) ☐ The Consultant is not required to pay any wages, entitlements or fees, OR
- (2) The Consultant is required to pay wages, entitlements or fees, and  
A. ☐ has not B. ☐ has  
paid all remuneration, entitlements and fees legally due and payable to or for (for example in relation to superannuation) relevant employees, in respect of work under the Contract as at the date of this statement, and  
C. ☐ is D. ☐ is not  
aware of any existing or proposed claims or actions by its employees for payment of wages, entitlements or fees, including under relevant security of payment legislation, in relation to the Consultant or St Hilliers.



4. Immigration – compliance with Migration Act (Cwth), Fair Work Act (Cth) and anti-slavery legislation	
(1)	<input type="checkbox"/> The Consultant does not have any employees, OR
(2)	<p>The Consultant has engaged employees, and</p> <p>A. <input type="checkbox"/> has not      B. <input type="checkbox"/> has</p> <p>maintains procedures to ensure that it complies with the Migration Act, does not exploit its employees contrary to the Migration Act, the <i>Fair Work Act</i>, or relevant State and Federal anti-slavery legislation and has satisfied itself that all of its employees doing work or who have done work under the Contract as at the date of this statement are legally permitted to work in Australia, hold any necessary licences, visas or permits, and comply with any work-related visa conditions.</p>
5. Title to Goods and materials	
(1)	<input type="checkbox"/> The Consultant will not be supplying any goods or materials, OR
(2)	<p>The Consultant will be supplying goods or materials, and</p> <p>A. <input type="checkbox"/> has not      B. <input type="checkbox"/> has</p> <p>legal title to all goods and materials supplied by it under the contract, whether stored on or off site, or will have such legal title by the date for payment.</p>
6. Court or Tribunal Decisions	
(1)	<input type="checkbox"/> The Consultant has not been involved in any court or tribunal hearings in the last 3 years, OR
(2)	<p><input type="checkbox"/> The Consultant:</p> <p>A. <input type="checkbox"/> has not      B. <input type="checkbox"/> has</p> <p>in the preceding 3 years, had an adverse decision, direction or order of a court or tribunal made against it for a breach of: (1) a designated building law, (2) a work health and safety law or (3) the <i>Migration Act</i> 1958 (Cth);</p>
(3)	<p><input type="checkbox"/> The Consultant and its Related Entities</p> <p>A. <input type="checkbox"/> have not      B. <input type="checkbox"/> have</p> <p>in the preceding 3 years, been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) to a Building Contractor or Building Industry Participant.</p>
(4)	<p><input type="checkbox"/> The Consultant and its Related Entities</p> <p>A. <input type="checkbox"/> have not      B. <input type="checkbox"/> have</p> <p>in the preceding 3 years, owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant</p>
7. Corporations Act safe harbour provisions	
(1)	The Consultant and its Related Entities have not made an application under s 411 of the Corporations Act nor taken any action to have 'safe harbour' provisions to apply to them or their directors under the Corporations Act.
(2)	<p>The Consultant and its Related Entities</p> <p>A. <input type="checkbox"/> have not      B. <input type="checkbox"/> have</p> <p>in the preceding 6 months or since the Consultant last advised St Hilliers, whichever is the earlier,</p> <ul style="list-style-type: none"> <li>made an application under section 411 of the Corporations Act; or</li> <li>taken any action to have 'safe harbour' provisions to apply to it or its directors under the Corporations Act.</li> </ul>
8. WHS	
The Consultant and its Related Entities at all times comply with all relevant work, health and safety legislation relating to the Project, the Site and the Services.	
9. Government Procurement (Secure Local Jobs) Code 2019	
(1)	<p>Is the Government Procurement (Secure Local Jobs) Code 2019 applicable to this project?</p> <p>A. <input type="checkbox"/> yes      B. <input type="checkbox"/> no</p> <p>If yes question (2) must be answered</p>
(2)	<p>The Consultant and its Related Entities</p> <p>A. <input type="checkbox"/> have not      B. <input type="checkbox"/> have</p> <p>since the Consultant last advised St Hilliers,</p> <ul style="list-style-type: none"> <li>a valid certificate, if a new certificate has been issued, provide a copy of this when returning this schedule.</li> <li>abided by all requirements of this Code</li> </ul>
10. New South Wales Code of Practice for Procurement	
(1)	<p>Is the New South Wales Code of Practice for Procurement applicable to this project?</p> <p>A. <input type="checkbox"/> yes      B. <input type="checkbox"/> no</p>



	If yes question (2) must be answered
(2)	<p>The Consultant and its Related Entities</p> <p>A. <input type="checkbox"/> have not      B. <input type="checkbox"/> have</p> <p>since the Consultant last advised St Hilliers,</p> <ul style="list-style-type: none"> <li>• has the Consultant had any breaches of the code?</li> <li>• Any unregistered written agreements</li> </ul>

Where you:

(1) have answered 'is not' or 'has not' to any of the questions numbered (2) (3) or (4) above, or

(2) are not satisfied that all of your agents, subcontractors or Secondary Consultants have complied with the matters dealt with in this Declaration during the period to which this Declaration applies

YOU MUST provide all details here (attach additional pages if necessary):

---



---



---



---



---

Signature of person authorised  
to sign on behalf of Consultant

Date Signed  
(dd/mm/yyyy)

Print Name

Title of Signatory

☐ Director

☐ Company Secretary

☐ Other (specify):

**WARNING: the following applies specifically to NSW Projects. Similar law applies in other States and Territories**

- Any Consultant who knowingly provides a principal contractor with a written statement that is false, is guilty of an offence (Maximum penalty 100 penalty units (currently \$11,000)).
- Any written statement will not relieve the principal contractor of liability if, at the time the written statement was provided, the principal contractor believed the written statement to be false.
- The principal contractor must retain a copy of any written statement for a period of not less than five years (Pay-roll tax), six years (Remuneration) or seven years (Workers Compensation).
- In NSW, this statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987*(NSW)

For more information, please visit

Payroll: [www.payrolltax.com.au](http://www.payrolltax.com.au) for all State and Territory payroll legislation, Revenue Officers, calculators etc

**NSW:** Workers compensation is dealt with by icare (Insurance & Care NSW) at <http://www.workersinsurance.icare.nsw.gov.au>

WHS issues are dealt with by SafeWork NSW at <http://www.safework.nsw.gov.au>

Office of State Revenue website [www.osr.nsw.gov.au](http://www.osr.nsw.gov.au)

Office of Finance, Services and Innovation website <https://www.finance.nsw.gov.au>

Copies of the Workers Compensation Act 1987, the Pay-roll Tax Act 2007 and the Industrial Relations Act 1996 can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

**VIC:** WorkSafe Victoria website [www.workcover.vic.gov.au](http://www.workcover.vic.gov.au)

Business Victoria website [www.business.vic.gov.au](http://www.business.vic.gov.au)

Copies of the Accident Compensation Act 1985, the Accident Compensation (WorkCover Insurance) Act 1993 and the Workplace Injury Rehabilitation and Compensation Act 2013 can be found at [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

**ACT:** WorkSafe ACT is available through the Access Canberra Website: for workers compensation, see:

[https://www.accesscanberra.act.gov.au/app/answers/detail/a\\_id/2989/kw/workers%20compensation](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2989/kw/workers%20compensation)

For Work Health and Safety see: <https://www.accesscanberra.act.gov.au/app/home#/workhealthandsafety>

Copies of the *Workers Compensation Act 1951* and Regulations can be found at <http://www.legislation.act.gov.au/default.asp>

**Qld:** WorkCover website <https://www.worksafe.qld.gov.au>

*Business* Queensland in relation to employee rights is at: <https://www.business.qld.gov.au/running-business/employing/employee-rights>

Copies of the *Workers' Compensation and Rehabilitation Act 2003* and other relevant legislation can be found <https://www.legislation.qld.gov.au>

13



## SCHEDULE H

(clause 18.3(f))

### CHECKLIST AS TO ONGOING COMPLIANCE WITH THE BUILDING CODE 2016

For the purpose of ensuring that you continue to be in a position to absolutely comply with the Code, please fully respond to, and provide all relevant information required by, the following questions. Where you were required to submit information on these issues previously eg with your tender for the Contract, or a previous undertaking, please ALSO identify any material changes since your previous response.

This document is completed by on behalf of \_\_\_\_\_ a Director of / a person authorised by (Insert name) \_\_\_\_\_  
ABN: \_\_\_\_\_ ('the Consultant') pursuant to a contract with 'ST HILLIERS' (ABN 66 082 729 039) for Project \_\_\_\_\_  
(the 'Contract'), and relates to (complete as appropriate) (1) the period covered by Payment Claim No. \_\_\_\_\_,  
or (2) work between the dates \_\_\_\_\_ and \_\_\_\_\_ (the 'Relevant Period'). References in this document to

- employees of the Consultant are to those employees working on the Project and includes any employees of other persons who are utilised by or seconded to the Consultant;
- the 'Consultant' include such other persons or employers;

in relation to, or for the purposes of, the Project. References to the Code also include earlier codes and guidelines, to the extent they are relevant

1. Does the Consultant have an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016?

Yes: ☐ No: ☐

Please provide details:

[Attach a copy of the letter of compliance issued by the ABCC or declaration of eligibility (Use Form G03b Proof of Eligibility Self-Identification form) if the Consultant is waiting a letter of compliance and is not covered by an enterprise agreement made on or after 2 December 2016]

2. Is the Consultant excluded from performing Building Work funded by a State or Territory Government?

Yes: ☐ No: ☐

If Yes, please provide details: / details of any change since your previous response

3. Has the Consultant within the preceding 3 years had an adverse decision, direction or order of a court or tribunal made against it for a breach of a designated building law, work health and safety law or the Migration Act 1958 (Cth)?

Yes: ☐ No: ☐

If Yes, please provide details: / details of any change since your previous response

4. Has the Consultant or its Related Entities within the preceding 3 years been required to pay any amount under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) to a Building Contractor or Building Industry Participant?

Yes: ☐ No: ☐

If Yes, please provide details: / details of any change since your previous response

5. Has the [Tenderer] or its Related Entities within the preceding 3 years owed any unsatisfied judgement debts to a Building Contractor or Building Industry Participant?

Yes: ☐ No: ☐

If Yes, please provide details: / details of any change since your previous response

Signature \_\_\_\_\_

Position/Title: \_\_\_\_\_ Dated: \_\_\_\_\_

The above is not a comprehensive list of non-compliant matters. If you are unsure of whether any aspect of your workplace relations arrangements fails to comply with the Code please give details so that an assessment can be made.

For more information, please visit the website <https://www.abcc.gov.au> The Code can be downloaded from:  
<https://www.legislation.gov.au/Details/F2017C00125>



## SCHEDULE J

(clause 4.1(c))

### SECONDARY CONSULTANT'S DEED POLL

*[for completion by Secondary Consultants and Subcontractors]*

THIS DEED POLL is made the \_\_\_ day of \_\_\_\_\_ 20\_\_

**BY:** The party referred to in the Annexure to this Deed (the Annexure) (including its successors and assigns) (the Counterparty)

**IN FAVOUR OF:** 'ST HILLIERS' (ABN 66 082 729 039) of Ground Floor 8 Windmill, St Millers Point, The Rocks, NSW 2000 (St Hilliers) and the Head Contract Principal referred to in the Annexure.

#### RECITALS:

- A. This Deed Poll is made in favour of St Hilliers and the Head Contract Principal by the Counterparty.
- B. St Hilliers has entered into an Agreement with the Head Contract Principal for the construction of a project identified in the Annexure (the Project).
- C. The Consultant referred to in the Annexure has agreed with St Hilliers to perform Services in relation to the Project (the Services) by way of the Contract.
- D. The Contract requires the Consultant to ensure that any consultant, secondary subcontractor or other agent engaged to carry out part of the Services will enter into a deed in the form of this Deed.
- E. The Consultant has engaged the Counterparty to carry out part of the Services.

#### THIS DEED POLL WITNESSES THAT:

##### 1 INTERPRETATION

- 1.1 In this Deed, terms defined in the Agreement or Contract, as the case may be, and not otherwise defined in this Deed have the same meanings, and the following terms shall have the following meanings, unless the context otherwise indicates.
- 1.2 **"Underlying Contract"** means the Contract between the Consultant and the Counterparty.
- 1.3 **"Agreement"** means the agreement between the Head Contract Principal and St Hilliers.
- 1.4 **"Contract"** means the contract between St Hilliers and the Consultant.
- 1.5 In this Deed headings are inserted for convenience of reference only and shall be ignored in constructing this Deed and unless the context otherwise indicates:
  - a) words importing the singular number include the plural and vice versa and words importing persons include firms and corporations;
  - b) references to any legislation or to any section or provision of any legislation include any modification or re-enactment of, or any legislative provision substituted for, and all legislation and statutory instruments under such legislation;
  - c) references to any document (including this Deed) include any amendment to or substitute for such document; and
  - d) references to any party to or in this Deed or any other document include its successors, substitutes and permitted assigns.
- 1.6 To the extent of any inconsistency between this Deed, the Agreement or the Contract, this Deed prevails unless the parties expressly agree otherwise.
- 1.7 St Hilliers is a party to this Deed both in its own capacity and as agent for the Head Contract Principal.
- 1.8 The Building Code 2016 (Code) and any Guidelines (Guidelines) apply to this Project. By agreeing to undertake the work/ Services, the Counterparty will be taken to have read and to agree to comply with the Code and Guidelines. For more information, please visit the website <https://www.abcc.gov.au>.

##### SERVICE STANDARDS

- 1.9 The Counterparty undertakes and represents to St Hilliers that:
  - a) the Services (including any design work) shall be undertaken by appropriately qualified persons in a proper and workmanlike manner, to the highest standards, in accordance with all statutory requirements and relevant Australian and other standards (including the Code and the Guidelines), consistently with the Construction Program, Design Control Plan and in accordance with the Contract;
  - b) it will comply with the Code and the Guidelines, including in respect of its workplace arrangements and all private consulting activities and will comply with the relevant model contract clauses which are hereby deemed to be incorporated in this Deed, as if references in the model contract clauses to 'the Contractor' were references to the Counterparty;
  - c) the Services (including any design) shall be fit and suitable for the purpose for which they are intended;
  - d) at all relevant times it shall be properly licensed to carry out the Services for the purposes of any applicable legislation and has satisfied all lawful requirements in this regard, including without limitation, with respect to any compulsory fees, contributions and insurances;
  - e) where the Services includes any design by the Counterparty it will provide detailed documentation design for the construction of the Works as required by St Hilliers including shop drawings, specifications, samples, models, technical information, calculations, patterns and the like (Design Documents), perform the design of the Works so as to satisfy St



Hilliers' brief or specifications, ensure that the design requirements of St Hilliers are properly and fully complied with and reflected in the Design Documents, co-ordinate, direct and control the completion of the Design Documents required for the Works, and submit such number of copies to St Hilliers as may be required not less than 14 days prior to their use for the Works;

- f) the Services (including any design) shall be completed to a standard whereby they are fit and suitable for the purpose for which they are intended and free of defects,;
  - g) it has thoroughly inspected and investigated the Site, including any prior work, services, existing structures and other conditions and satisfied itself that it can undertake and complete the Services for the Fee in accordance with the Construction Program, Design Control Plan and the Contract;
  - h) it has had all necessary access to and has examined and understood all documents relevant to its obligations under this Contract and has identified and agreed to accept the risks associated with the carrying out of the Services in accordance with the Contract;
  - i) at all relevant times it shall be properly licensed to carry out the Services for the purposes of any applicable legislation and has satisfied all lawful requirements in this regard, including without limitation, with respect to any compulsory fees, contributions and insurances;
  - j) it has not relied upon any representations, agreements or representations from any party (including St Hilliers) in entering into this Deed;
  - k) for the benefit of St Hilliers and the Head Contract Principal, that the amount payable to it pursuant to the Underlying Contract covers all its costs of complying with its obligations;
  - l) if the Counterparty is the trustee of a trading trust, the Counterparty is properly authorised to enter into this Deed and the Underlying Contract and has not restricted or lost its right of indemnity out of trust assets in relation to its actions under this Deed or the Underlying Contract;
  - m) where there is any Preliminary Design, it is satisfied that the Preliminary Design is suitable for the purposes stated in the Brief;
  - n) where St Hilliers requests the Counterparty to supply St Hilliers with information required by St Hilliers for the purposes of the National Greenhouse and Energy Reporting Act 2007, that the Counterparty takes all reasonable steps to provide that information;
  - o) it has and will continue to carry out and complete the Services:
    - i. with proper skill, care and diligence; and
    - ii. in accordance with the Underlying Contract and (to the extent that it applies to the Services) the Contract
- 1.10 The Counterparty must comply with all Legislative Requirements in relation to Environmental management, occupational health and safety on the Project site and must ensure that its employees, agents and Secondary Consultants obey the Site Rules. St Hilliers may direct the Counterparty to remove from the Site any such person who misconducts themselves. The Counterparty acknowledges that St Hilliers may conduct alcohol or drugs tests of personnel on Site in accordance with appropriate St Hilliers safety policies.

#### NOTIFICATIONS AND INFORMATION

- 1.11 Notwithstanding any provision of the Underlying Contract, the Counterparty agrees to:
- a) notify St Hilliers promptly of (i) any material dispute between the Counterparty and the Consultant and of any material default by the Consultant under the Underlying Contract; (ii) any (proposed) action by or through the Counterparty pursuant to security of payment or industry payments legislation;
  - b) provide St Hilliers with such information relating to the Services as St Hilliers may reasonably request from time to time, including permitting inspections by St Hilliers of partially-completed Services,
- provided that the provision of such information or inspections under this Deed shall not limit or discharge the obligations of the Counterparty under the Underlying Contract, nor relieve the Counterparty from any liability which it may have in respect of any defect or default in, or relating to, the Services.

#### INSURANCE

- 1.12 The Counterparty will:
- a) take out professional indemnity insurance with a reputable insurer approved by St Hilliers (such approval not to be unreasonably withheld) up to an indemnity limit acceptable to St Hilliers;
  - b) maintain that insurance for 6 years or any longer period instructed by St Hilliers; and
  - c) pay all premiums, commissions, stamp duties, levies, charges and other expenses necessary for keeping the insurance in force;
  - d) and provide satisfactory evidence of these things to St Hilliers on request.
- 1.13 The Counterparty must not do anything or permit anything to be done which may prejudice any such insurance or omit to do anything where such omission may prejudice such insurance.
- 1.14 If any default is made by the Counterparty in effecting or keeping up any such insurance policy or if any such insurance policy becomes void or voidable, St Hilliers may (but is not obliged to) effect or keep up that insurance policy at the cost of the Counterparty or, failing it, the Consultant.
- 1.15 The Counterparty and the Consultant will do all things necessary and provide all documents, evidence and information necessary to enable St Hilliers to collect or recover any moneys due or to become due in respect of any insurance policy at the cost of the Consultant.
- 1.16 The Counterparty and the Consultant shall immediately notify St Hilliers of any cancellation, variation or reduction of any such insurance policy, and of the occurrence of any event giving rise to any claim under any such insurance policy in respect of the Services or the Project.



### WAIVERS AND REMEDIES

- 1.17 No failure to exercise or delay in exercising any right or remedy under this Deed or the Contract shall operate as a waiver by St Hilliers, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise of that (or any other) right or remedy.
- 1.18 The rights and remedies under this Deed are cumulative and in addition to any other rights and remedies provided by law.

### STAMP DUTY

The Consultant shall pay any stamp or other duties (together with any fines or penalties for late payment) on or in connection with the execution, delivery and performance of this Deed and the transactions contemplated by this Deed which may be payable in any state or territory of Australia, whether assessable against itself or any other person.

### SEVERANCE

If any provision of this Deed is prohibited or unenforceable in any jurisdiction then that provision shall be deemed to be deleted and severed from this Deed in relation to that jurisdiction. The remaining provisions of this Deed will continue to be valid and enforceable in that jurisdiction. This clause will not affect the validity or enforceability of the provision or the Deed as a whole in any other jurisdiction.

### ASSIGNMENT AND NOVATION

The Counterparty may not assign or transfer its rights or obligations under the Underlying Contract and/or this Deed except as provided in this clause. If:

- 1.19 the Contract is terminated or
- 1.20 the rights and obligations of St Hilliers under the Contract are assigned or novated, or
- 1.21 St Hilliers directs the Counterparty to do so for any other reason,
- the Counterparty will consent to the assignment or novation by St Hilliers of the Underlying Contract and/or St Hilliers' entitlements under this Deed Poll to a nominee of St Hilliers.

### GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in accordance with the laws of the State or Territory in which the Project is carried out and each party submits to the non-exclusive jurisdiction of the courts of that place.

### EXCLUSION

To the extent permitted by law, the operation of:

- 1.22 Part 4 of the Civil Liability Act 2002 (NSW) ;
- 1.23 Chapter 2 Part 2 of the Civil Liability Act 2003 (Qld);
- 1.24 Chapter 7 of the Civil Law (Wrongs) Act 2002 (ACT) and s141, Building Act 2004 (ACT);
- 1.25 Part IVAA of the Wrongs Act 1958 (Vic);
- 1.26 Part 1F, Civil Liability Act 2002 (WA);
- 1.27 Proportionate Liability Act 2005 (NT);
- 1.28 Part 9A, Civil Liability Act 2002 (Tas) and s252 Building Act 2000 (Tas);
- 1.29 Pt 3, Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA) and s 72, Development Act 1993 (SA);
- 1.30 s87C, Competition and Consumer Act (Cth); and
- 1.31 Part 7.10 Division 2A, Corporations Act (Cth);

is excluded in relation to all and any rights, obligations and liabilities of the parties with respect to any matter to which the relevant legislative provisions referred to above would apply but for this clause,

### RELIANCE

This Deed may be relied on and enforced by St Hilliers and the Head Contract Principal in accordance with its terms whether or not it is executed by them.

### ANNEXURE

<b>Item 1: The Counterparty:</b>	
Name:	
ABN	
Address	
<b>Item 2: The Project</b>	
<b>Item 3: The Consultant:</b>	
Name:	
ABN	



# PROFESSIONAL SERVICES AGREEMENT

B02a

Address	
Head Contract Principal:	

## EXECUTED AS A DEED

Executed for and on behalf of the Counterparty named in this Deed in accordance with section 127 of the Corporations Act

\_\_\_\_\_  
Director

[PRINT NAME]

\_\_\_\_\_  
Director / Company Secretary

[PRINT NAME]

## SCHEDULE K (1)

### STATUTORY DECLARATION BY CONSULTANT

#### Statutory Declarations Act 1959

I, **[Name of Person making declaration for Consultant]** of **[Person's Address]** make the following declaration under the Statutory Declarations Act 1959, in relation to the Subcontract between St Hilliers Property Pty Ltd and **The Trustee for DKO ARCHITECTURE (NSW)** (ABN 81 956 706 590)

"the Consultant" for various services in relation to the Project at: **North Tower Gosford** (the Subcontract):

- 1) I hold the position of: [delete or add as appropriate] Director/Company Secretary/ Partner **[delete or add as appropriate: Director/Company Secretary/ Partner]** of the Consultant and I am in a position to know the facts contained herein and to bind the Consultant by the terms of this declaration, and I am duly authorised by the Consultant to make this declaration on its/their behalf.
- 2) All Secondary Consultants and sub Consultants performing work under the Subcontract have been approved by St Hilliers.
- 3) All the Consultant's workers who at any time have been engaged on work under the Subcontract by the Consultant have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Consultant of Payment Claim No **[insert number]**
- 4) All Secondary Consultants of the Consultant have been paid all that is due and payable to them, up to the date of submission by the Consultant of Payment Claim No **[insert number]** in respect of their part of the work under the Subcontract.
- 5) The information provided to St Hilliers for inclusion in the Site Personnel Register is current and correct.
- 6) All Secondary Consultants and sub Consultants performing work under the Subcontract have been informed of the existence of the Building and Construction Industry Security of Payments Act 1999 and the Building and Construction Industry Long Service Leave Payments Act 1986.
- 7) A priced Bill of Quantities for each trade and/or section of the Bill of Quantities the subject of this Payment Claim No **[insert number]** has been lodged with St Hilliers in accordance with the Subcontract. [delete if not applicable]

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

\_\_\_\_\_  
[signature of person making the declaration].

Declared at: \_\_\_\_\_ on \_\_\_\_\_  
[place] [date (Day/Month/Year)]

Before me

\_\_\_\_\_  
[signature of person before whom the declaration is made].

Name: \_\_\_\_\_ Qualifications: \_\_\_\_\_ Address: \_\_\_\_\_,  
[Full name, qualification and address of person before whom the declaration is made (in printed letters)]

Note 1: A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years—see section 11 of the *Statutory Declarations Act 1959*.

Note 2: Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959*—see section 5A of the *Statutory Declarations Act 1959*



## SCHEDULE K (2)

(clause 17A)

### STATUTORY DECLARATION BY SECONDARY CONSULTANT

#### Statutory Declarations Act 1959

I, **[Name of Person making declaration for Consultant]** of **[Person's Address]** make the following declaration under the Statutory Declarations Act 1959, in relation to the Subcontract between St Hilliers Property Pty Ltd and **[Name and ABN of Consultant]**. "the Consultant" for various services in relation to the Project at: **[name of project]** (the Subcontract):

- 1) I hold the position of: **[delete or add as appropriate] Director/Company Secretary/ Partner** of a Secondary Consultant to the Consultant, being: **[give name and ABN of legal entity]** (the 'Secondary Consultant') pursuant to a Secondary Subcontract Agreement, and I am in a position to know the facts contained herein and to bind the Secondary Consultant by the terms of this declaration, and I am duly authorised by the Secondary Consultant to make this declaration on its/their behalf.
- 2) All sub Consultants performing work under the Secondary Subcontract have been approved by St Hilliers.
- 3) All the Secondary Consultant's workers who at any time have been engaged on work under the Secondary Subcontract by the Secondary Consultant have been paid, in accordance with the relevant award or industrial instrument, all moneys due and payable to them up to the date of submission by the Secondary Consultant to the Consultant of Payment Claim No **[insert number]**
- 4) All Secondary Consultants of the Consultant have been paid all that is due and payable to them, up to the date of submission by the Secondary Consultant to the Consultant of Payment Claim No **[insert number]** in respect of their part of the work under the Secondary Subcontract.
- 5) All sub Consultants performing work under the Secondary Subcontract have been informed of the existence of the Building and Construction Industry Security of Payments Act 1999 and the Building and Construction Industry Long Service Leave Payments Act 1986.
- 6) The information provided to St Hilliers or the Consultant for inclusion in the Site Personnel Register is current and correct.

I understand that a person who intentionally makes a false statement in a statutory declaration is guilty of an offence under section 11 of the *Statutory Declarations Act 1959*, and I believe that the statements in this declaration are true in every particular.

\_\_\_\_\_  
*[signature of person making the declaration].*

Declared at: \_\_\_\_\_ on \_\_\_\_\_  
[place] [date (Day/Month/Year)]

Before me

\_\_\_\_\_  
*[signature of person before whom the declaration is made.].*

Name: \_\_\_\_\_ Qualifications: \_\_\_\_\_ Address: \_\_\_\_\_  
*[Full name, qualification and address of person before whom the declaration is made (in printed letters)]*

Note 1: A person who intentionally makes a false statement in a statutory declaration is guilty of an offence, the punishment for which is imprisonment for a term of 4 years—see section 11 of the *Statutory Declarations Act 1959*.

Note 2: Chapter 2 of the *Criminal Code* applies to all offences against the *Statutory Declarations Act 1959*—see section 5A of the *Statutory Declarations Act 1959*

13

---

## SCHEDULE L

---

(clauses 18.1 and 18.4)

### **METHODS OF LODGEMENT AND RESPONSE FOR PAYMENT CLAIMS**

Payments Process – (Refer: Contract Clause 18)

Date of lodgement: Payment Claims to be submitted on the 25th of each month, or the closest previous working day prior, as per Key Terms of Contract and clause 18.1.

Method of lodgement: Payment claims to be submitted in order of preference as follows:

- 1) The Project Document Management System email address – \_\_\_\_\_
- 2) if claim cannot be submitted by method 1, The Project Document Management System facsimile – \_\_\_\_\_
- 3) if claim cannot be submitted by any of the methods above, Delivered by hand to St Hilliers Office at \_\_\_\_\_
- 4) if claim cannot be submitted by any of the methods above, Delivered by registered post to the above Office address.

**Method of response:** St Hilliers will issue a Payment Schedule in accordance with clause 18. 4 via

- 1) The Project Document Management System email to your Company designated email address , or
- 2) if response cannot be issued by method 1, Facsimile to your Company designated number.





---

## SCHEDULE M

---

(clause 4.1(f) (iii))

### CONSULTANT'S MONTHLY INSPECTION CERTIFICATE

**To:** ST HILLIERS PROPERTY PTY LTD (ABN 66 082 729 039)  
Ground Floor 8 Windmill,  
St Millers Point NSW 2000  
("St Hilliers")

**From:** Insert Consultant's Full Company Name  
Insert ABN or ACN  
Insert Address  
Insert Suburb State Postcode  
("Consultant")

In accordance with and subject to the terms of the agreement entered into between the Consultant and St Hilliers dated on or about Insert Date ("Agreement"), in the professional opinion of the Consultant as at the date of this certificate:

- 1) those parts of the works designed by the Consultant pursuant to the Agreement ("Works") appear generally to be constructed by or on behalf of St Hilliers in accordance with:
  - a) all applicable legislative requirements, including, without limitation, all applicable requirements of the Building Code of Australia and the Australian Standards, and
  - b) the design intent expressed in the design prepared by the Consultant;
- 2) except as stated below, all inspections required under the Agreement to confirm the matters referred to in paragraph 1 have been undertaken by the Consultant and there are no known defects or omissions in those parts of the Works designed by the Consultant of which the Consultant is aware or which would be apparent to the Consultant by viewing the surface of the Works to date other than as detailed in the attached Schedule;

This certificate is subject to:

- the exceptions listed below;
- compliance by St Hilliers with advice provided by the Consultant at or subsequent to all inspections; and
- addressing the issues set out in the attached Schedule (refer Item 2 above) including correction of any defective work.

Exceptions

#### INSERT SCHEDULE OF DEFECTS AND OMISSIONS

Executed on behalf of: **\*\*Insert Consultant's Full Company Name\*\***

---

Signature of director

---

Name of director (print)

---

Date Insert Date

---

## SCHEDULE N

---

(clause 4.1(f) (iv))

### **CONSULTANT'S DESIGN CERTIFICATE on completion**

**To:** ST HILLIERS PROPERTY PTY LTD (ABN 66 082 729 039)  
of Ground Floor 8 Windmill,  
St Millers Point NSW 2000  
("St Hilliers")

**From: Insert Consultant's Full Company Name**  
Insert ABN or ACN  
Insert Address  
Insert Suburb State Postcode  
("Consultant")

In accordance with and subject to the terms of the agreement entered into between the Consultant and St Hilliers dated on or about Insert Date ("Agreement"), in the professional opinion of the Consultant as at the date of this certificate, the Consultant's Material listed below has been designed by the Consultant to:

1. comply with the requirements of the Agreement; and
2. satisfy all applicable legislative requirements, including, without limitation, all applicable requirements of the Building Code of Australia and the Australian Standards;

having due regard to the assumptions that the Consultant can be reasonably expected to make in accordance with professional industry practice and on the assumption that the Consultant is exercising the level of skill, care and attention required of it under the Agreement.

**Consultant's Material**  
[INSERT SCHEDULE]

**Executed on behalf of: \*\*Insert Consultant's Full  
Company Name\*\***

---

Signature of director

---

Name of director (print)

---

Date Insert Date



## SCHEDULE O

(clause 8)

**Form 1: Instructions: A deed in this form to be used for Novation from St Hilliers to substitute CONTRACTOR Where Consultant does not change**

### DEED OF NOVATION

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**BETWEEN** ST HILLIERS PROPERTY PTY LTD (ABN 66 082 729 039) of Ground Floor 8 Windmill, St Millers Point, New South Wales (St Hilliers);

**AND** [\*\*\*INSERT COMPANY NAME HERE \*\*\*] PTY LIMITED (ABN \_\_\_\_\_) of [\*\*\*Insert Address Here\*\*\*], New South Wales (the Substitute Party)

**AND** [\*\* INSERT COMPANY NAME HERE] PTY (ABN \_\_\_\_\_) of [\*\*\*Insert Address Here\*\*\*], New South Wales (the Consultant)

#### BACKGROUND

- A. St Hilliers and the Head Contract Principal have entered into a contract for the development and construction of the [\*\*\*Insert Project Name Here\*\*\*] (the Project).
- B. St Hilliers and the Consultant entered into the Professional Services Agreement for the Consultant to provide Services to St Hilliers in relation to that Project.
- C. St Hilliers wishes to novate its rights and obligations under the Professional Services Agreement to the Substitute Party or its nominee in accordance with this Deed and pursuant to the Professional Services Agreement.
- D. Subject to this Deed, the Consultant has agreed to accept the Substitute Party or its nominee in place of St Hilliers for the performance of all the obligations of St Hilliers under the Professional Services Agreement.

#### OPERATIVE PARTS

##### 2 DEFINITIONS AND INTERPRETATION

2.1 In this Deed, unless the context otherwise requires:

"Effective Date" means the date the Consultant receives written notice from St Hilliers under the Professional Services Agreement requiring the execution of this Deed.

"Professional Services Agreement" means agreement between St Hilliers and the Consultant dated [Insert Date].

2.2 In this Deed, the Definitions and Interpretation contained in the Professional Services Agreement apply to this Deed unless otherwise defined in this Deed or the context otherwise requires.

#### NOVATION

2.3 With effect on and from the Effective Date, subject to this Deed:

- b) the Substitute Party or its nominee will be substituted for St Hilliers under the Professional Services Agreement as if the Substitute Party or its nominee had originally been a party to the Professional Services Agreement instead of St Hilliers;
- c) the Substitute Party or its nominee will:
  - i. be bound by and punctually comply with the Professional Services Agreement as it relates to St Hilliers;
- d) assume all the obligations and liabilities of St Hilliers under or relating to the Professional Services Agreement; and
- e) be entitled to all the rights and benefits conferred on St Hilliers under or relating to the Professional Services Agreement, as if the Substitute Party or its nominee had been a party to the Professional Services Agreement instead of St Hilliers; and
- f) the Consultant agrees with the Substitute Party or its nominee that it shall (punctually for the benefit of the Substitute Party or its nominee) continue to perform its obligations in accordance with the terms of the Professional Services Agreement; and
- g) each reference in the Professional Services Agreement to St Hilliers is to be read and construed as if it were a reference to the Substitute Party.

#### Release and Acceptance

2.4 Upon receipt by the Consultant of the sum certified by St Hilliers as owing under the Professional Services Agreement for Services performed by the Consultant up to the Effective Date,

- a) the Consultant:

NB

- i. unconditionally waives, releases and forever discharges St Hilliers its officers and employees from the further performance of, or liability under, the Professional Services Agreement and from all claims (whether for costs, damages, fees, expenses or otherwise), actions, demands, proceedings and liability of any and every kind, name and nature and description whether known or unknown that the Consultant has or claims to have or but for this release might have had against St Hilliers in connection with the Professional Services Agreement provided always that this release does not extend to any obligations of St Hilliers under this Deed; and
- b) subject to this Deed, accepts the liability of the Substitute Party or its nominee in place of the liability of St Hilliers in respect of all claims of the type set out in clause 3.1(a)(i) in connection with the Professional Services Agreement.
- c) St Hilliers unconditionally waives, releases and forever discharges the Consultant, its officers and employees from all claims, demands, debts, accounts, costs, liens, actions, proceedings and liability of any and every kind, name and nature and description whether known or unknown which St Hilliers has or might have or might assert against the Consultant under the Professional Services Agreement, provided always that this release does not extend to any obligations of the Consultant under this Deed.
- d) Nothing in this clause shall restrict St Hilliers or the Consultant from defending or bringing a cross claim (provided the cross claim related to the subject matter of the claim against that party) or a claim for contribution with respect to, any claim, action, suit or proceeding brought by one of them against the other.

**Undertaking**

2.5 The Consultant undertakes to the Substitute Party or its nominee that -

- a) the Services (as defined in the Professional Services Agreement) carried out to the date hereof are in accordance with the provisions of the Professional Services Agreement; and
- b) all claims of the type set out in clause 3.1(a)(i) known by the Consultant as at the Effective Date in connection with the Professional Services Agreement have been made by the Consultant to St Hilliers.

2.6 St Hilliers and the Consultant each undertake and warrant to each other that, as at the date of this Deed, they have notified the other of all existing and potential claims, demands, debts, accounts, costs, liens, actions and proceedings of any and every kind, name and nature and description which any person has or might have or might assert against either of them, or which they might have or assert against the other, in respect of the Project, of which they are aware

**affirmation of the Professional Services Agreement**

As and from the Effective Date, the Professional Services Agreement will be read and construed subject to this Deed. In all other respects the provisions of the Professional Services Agreement are ratified and confirmed and continue in full force and effect.

**further Assurances**

Each party must take all steps, execute all documents and do everything reasonably required by any other party to give effect to the transactions contemplated by this Deed.

**Dispute Resolution**

2.7 A dispute or difference between -

- a) St Hilliers and the Consultant in connection with the sum certified by St Hilliers as owing under the Professional Services Agreement for Services performed by the Consultant up to the Effective Date; or
- b) the Consultant and the Substitute Party or its nominee in connection with the Professional Services Agreement after the Effective Date,

2.8 shall be resolved pursuant to the provisions of clause 25 of the Professional Services Agreement which for the purposes of this Clause 7 are incorporated herein.

**General**

- 2.9 No party may assign any right under this Deed without the prior written consent of the other parties.
- 2.10 A variation of any term of this Deed must be in writing and signed by each party.
- 2.11 No delay, neglect or forbearance on the part of any party in enforcing against any other party any obligation under this Deed operates as a waiver or in any way prejudice any right of the first mentioned party under this Deed.
- 2.12 If any provision of this Deed is held to be invalid, illegal or unenforceable, this Deed will continue otherwise in full force and effect apart from such provision which will be taken to have been deleted.
- 2.13 Each party must pay its own legal costs and expenses arising out of the preparation of and entering into this Deed.
- 2.14 The Substitute Party or its nominee must bear any stamp duty or other duties chargeable in respect of or arising as a result of this Deed.
- 2.15 This Deed may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

In witness whereof, the parties have executed this Deed of Novation.

EXECUTED BY \*\*\*INSERT COMPANY NAME HERE \*\*\* PTY LIMITED (ABN \_\_\_\_\_) pursuant to Section 127 of the Corporations Act 2001:





# PROFESSIONAL SERVICES AGREEMENT

B02a

---

.....  
Secretary / Director

.....  
Name (please print)

.....  
Secretary / Director

.....  
Name (please print)

A handwritten signature in black ink, appearing to be 'NB' or similar initials, located in the bottom right corner of the page.

**Form 2: Instructions: a deed in this form to be used for Novation from existing Consultant to new consultant, where St Hilliers remains a party****DEED OF NOVATION**

THIS DEED is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

**BETWEEN** ST HILLIERS PROPERTY PTY LTD (ABN 66 082 729 039) of Ground Floor 8 Windmill, St Millers Point, New South Wales (St Hilliers);

**AND** [\*\*\*INSERT COMPANY NAME HERE \*\*\*] PTY (ABN \_\_\_\_\_) of [\*\*\*Insert Address Here\*\*\*], New South Wales (the Consultant)

**AND** [\*\*\*INSERT COMPANY NAME HERE \*\*\*] PTY LIMITED (ABN \_\_\_\_\_) of [\*\*\*Insert Address Here\*\*\*], New South Wales (the Incoming Party)

**BACKGROUND**

- A. St Hilliers and the Consultant entered into the Professional Services Agreement for the Consultant to provide services to St Hilliers in relation to [\*\*\*Insert Project Name Here\*\*\*] (the Project).
- B. The Consultant wishes to novate its rights and obligations under the Professional Services Agreement to the Incoming Party or its nominee in accordance with this Deed and pursuant to the Professional Services Agreement.
- C. Subject to this Deed, St Hilliers has agreed to accept the Incoming Party or its nominee in place of the Consultant for the performance of all the obligations of the Consultant under the Professional Services Agreement.

**OPERATIVE PARTS****3 DEFINITIONS AND INTERPRETATION**

3.1 In this Deed, unless the context otherwise requires:

"Effective Date" means the date agreed by the parties being the date specified in the Schedule.

"Professional Services Agreement" means agreement between St Hilliers and the Consultant dated Insert Date.

3.2 In this Deed, the Definitions and Interpretation contained in the Professional Services Agreement apply to this Deed unless otherwise defined in this Deed or the context otherwise requires.

**4 NOVATION**

4.1 With effect on and from the Effective Date, subject to this Deed:

- a) the Incoming Party or its nominee will be substituted for the Consultant under the Professional Services Agreement as if the Incoming Party or its nominee had originally been a party to the Professional Services Agreement instead of the Consultant;
- b) the Incoming Party or its nominee will:
- c) be bound by and punctually comply with the Professional Services Agreement as it relates to the Consultant;
- d) assume all the obligations and liabilities of the Consultant under or relating to the Professional Services Agreement as from commencement of the Services by the Consultant under the Professional Services Agreement; and
- e) be entitled to all the rights and benefits conferred on the Consultant under or relating to the Professional Services Agreement,
- f) as if the Incoming Party or its nominee had been a party to the Professional Services Agreement instead of the Consultant;
- g) St Hilliers agrees with the Incoming Party or its nominee that it shall (punctually for the benefit of the Incoming Party or its nominee) continue to perform its obligations in accordance with the terms of the Professional Services Agreement;
- h) St Hilliers accepts the liability of the Incoming Party or its nominee in place of the liability of the Consultant in connection with the Professional Services Agreement; and
- i) each reference in the Professional Services Agreement to 'the Consultant' is to be read and construed as if it were a reference to the Incoming Party.

**5 Mutual Releases**

Upon receipt by the Consultant of the sum specified in the Schedule which the Consultant and St Hilliers have agreed is owing by St Hilliers under the Professional Services Agreement for Services performed by the Consultant up to the Effective Date,

- a) the Consultant: unconditionally releases and forever discharges St Hilliers its officers and employees from the further performance of, or liability under, the Professional Services Agreement and from all claims (whether for costs, damages, fees, expenses or otherwise), actions, demands, proceedings and liability any and every kind, name and nature and description whether known or unknown which that the Consultant has or claims to have or but for this release might have had against St Hilliers in connection with the Professional Services Agreement, provided always that this release does not extend to any obligations of St Hilliers under this Deed.
- b) St Hilliers unconditionally waives, releases and forever discharges the Consultant, its officers and employees from all claims, demands, debts, accounts, costs, liens, actions, proceedings and liability of any and every kind, name and nature and description whether known or unknown which St Hilliers has or might have or might assert against the Consultant under the Professional Services Agreement, provided always that this release does not extend to any obligations of the Consultant under this Deed;
- c) subject to this Deed, St Hilliers accepts the liability of the Incoming Consultant in place of the liability of the Consultant in respect of all claims of the type set out in clause 3.1(a) in connection with the Professional Services Agreement.



- d) Nothing in this clause shall restrict St Hilliers or the Consultant from defending or bringing a cross claim (provided the cross claim related to the subject matter of the claim against that party) or a claim for contribution with respect to, any claim, action, suit or proceeding brought by one of them against the other.

**6 Undertakings**

6.1 The Consultant undertakes to the Incoming Party or its nominee that -

- a) the Services (as defined in the Professional Services Agreement) carried out to the date hereof are in accordance with the provisions of the Professional Services Agreement; and  
b) all claims of the type set out in clause 3.1 known by the Consultant as at the Effective Date in connection with the Professional Services Agreement have been made by the Consultant to St Hilliers.

6.2 The Incoming Party:

- a) undertakes and represents to St Hilliers that the Incoming Party is solvent and reputable and is not limited or disabled in any way from satisfactorily completing all of the obligations of the Consultant under the Professional Services Agreement which have not been performed by the Effective Date; and  
b) acknowledges that St Hilliers has entered into this deed in reliance on this undertaking;  
and, where the Incoming Party has been introduced to St Hilliers by the Consultant, the Consultant undertakes and represents to St Hilliers that to the best of its knowledge the Incoming Party is solvent and reputable and able to complete the obligations under the Professional Services Agreement which have not been performed by the Effective Date and acknowledges that St Hilliers has entered into this deed in reliance on this undertaking..

6.3 St Hilliers and the Consultant each undertake and warrant to the other that, as at the date of this Deed, they have notified each other of all existing and potential claims, demands, debts, accounts, costs, liens, actions and proceedings of any and every kind, name and nature and description which any person has or might have or might assert against either of them, or which they might have or assert against the other, in respect of the Project, of which they are aware.

**7 Affirmation of the Professional Services Agreement**

As and from the Effective Date, the Professional Services Agreement will be read and construed subject to this Deed. In all other respects the provisions of the Professional Services Agreement are ratified and confirmed and continue in full force and effect.

**8 Further Assurances**

Each party must take all steps, execute all documents and do everything reasonably required by any other party to give effect to the transactions contemplated by this Deed.

**9 Dispute Resolution**

9.1 A dispute or difference between -

- a) St Hilliers and the Consultant in connection with the sum certified by St Hilliers as owing under the Professional Services Agreement for Services performed by the Consultant up to the Effective Date; or  
b) the Consultant and the Incoming Party or its nominee in connection with the Professional Services Agreement after the Effective Date;

9.2 shall be resolved pursuant to the provisions of clause 25 of the Professional Services Agreement which for the purposes of this Clause 7 are incorporated herein.

**10 General**

10.1 No party may assign any right under this Deed without the prior written consent of the other parties.

10.2 A variation of any term of this Deed must be in writing and signed by each party.

10.3 No delay, neglect or forbearance on the part of any party in enforcing against any other party any obligation under this Deed operates as a waiver or in any way prejudice any right of the first mentioned party under this Deed.

10.4 If any provision of this Deed is held to be invalid, illegal or unenforceable, this Deed will continue otherwise in full force and effect apart from such provision which will be taken to have been deleted.

10.5 Each party must pay its own legal costs and expenses arising out of the preparation of and entering into this Deed.

10.6 The Incoming Party or its nominee must bear any stamp duty or other duties chargeable in respect of or arising as a result of this Deed.

10.7 This Deed may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.

**Schedule**

(1) Effective Date: [insert]

(2) Amount owing to Consultant by St Hilliers as at the Effective Date: [insert]

In witness whereof, the parties have executed this Deed of Novation.

EXECUTED BY \*\*\*INSERT COMPANY NAME HERE \*\*\* PTY LIMITED (ABN [redacted]) pursuant to Section 127 of the Corporations Act 2001:

.....  
Secretary / Director  
.....

.....  
Secretary / Director  
.....





PROFESSIONAL SERVICES AGREEMENT  
B02a

---

Name (please print)

Name (please print)

A handwritten signature in black ink, appearing to be 'AB', located in the bottom right corner of the page.



## SCHEDULE P

### MORAL RIGHTS CONSENT AND WAIVER

I \_\_\_\_\_ [insert author's name], in respect of the Information, ideas or concepts created by me in relation to the \_\_\_\_\_ (Project) (collectively, the Material):

- 1) consent to \_\_\_\_\_ (Principal) and St Hilliers Property Pty Ltd (Contractor), anyone authorised by the Principal or the Contractor, and the Principal's and the Contractor's licensees, successors, permitted assignees and novatees, doing or omitting to do anything, for any purpose, which may infringe any or all moral rights (as defined in the Copyright Act 1968 (Cth)) granted to me; and
- 2) to the extent permitted by laws outside Australia, waive to the Principal and the Contractor, anyone authorised by the Principal or the Contractor, and the Principal's and Contractor's licensees, successors, permitted assignees and novatees, any or all moral rights (or rights known as "droit moral") granted to me,

including the right to edit, change, copy, add to, take from, adapt or translate my Material, and the right not to have my Material attributed to me.

**"Information"** means any material, whether tangible or intangible, in any form, including documents, records, software, data and any other information.

EXECUTED AS A DEED by

Signature \_\_\_\_\_

Date \_\_\_\_\_

Witness: \_\_\_\_\_

