

"Park Grove West"

16 Pemberton Street, Botany

Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

BAYSIDE COUNCIL

and

JKN AUSTRALIA PTY LIMITED

ACN 151 283 635

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Contacts Sheet

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Representative: Mark Fitzpatrick

"Park Grove West"
16 Pemberton Street, Botany

This Agreement constitutes a planning agreement within the meaning of s93F of the *Environmental Planning and Assessment Act 1979*, and facilitates the provision of Development Contributions for the Public Benefit.

Parties

Bayside Council

ABN 80 690 785 443 Branch 003 of 2 Bryant Street, ROCKDALE NSW 2216
(Council)

and

JKN Australia Pty Limited ACN 151 283 635

ACN 151 283 635 of
(Developer)

Background

- A. The Developer owns or is entitled acquire the land identified in **Schedule 2**.
- B. The Developer lodged the Development Application seeking approval for the Development, including requests for variations to the height and floor space ratio development standards pursuant to clause 4.6 of the LEP.
- C. The Developer has offered to enter into a Planning Agreement in accordance with section 93F of the Act.
- D. The Developer has obtained development consent for the Development subject to conditions, by way of an Agreement pursuant to s 34 of the Land and Environment Court Act 1979 dated 12 December 2016 in proceedings 2016/00152527 which granted development consent for 'the redevelopment of the existing industrial site for a mixed use development comprising: 2 residential flat buildings ranging in height between 4 to 7 storeys, containing in total 269 residential apartments and 2 retail tenancies (323m²), above 2 levels of basement car park for 479 spaces' on a deferred commencement basis. The Developer among other things offered and agreed to dedicate land, carry out works and create easements (including as part of the s 34 conciliation process) . Following the filing of the Class 1 appeal the Developer agreed via the s 34 conciliation process to important design changes including reduction in height and density, without which the Council would never have agreed to enter into the s 34 Agreement or agree to enter into this Planning Agreement.
- E. The Developer is prepared to make Development Contributions in connection with carrying out of the Development in accordance with this Agreement.

Operative provisions

Part 1 - Preliminary

1. Definitions and interpretation

- 1.1 In this Agreement the following definitions apply:

Above Ground Construction Certificate any Construction Certificate for the Development that authorises the erection of any building above ground level.

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Agreement means this Planning Agreement under which the Developer agrees to make the Development Contributions. .

Buildings A1, A2, A3 and B1 means the buildings identified as buildings A1, A2, A3 and B1 on the plans subject of the Development Application and before the Court in Land and Environment Court Proceedings No. 2016/152527 at the time of the signing of the s 34 Agreement dated 12 December 2016. .

Business Day means any day in New South Wales which is not a Saturday, Sunday or any proclaimed public holiday.

Certifying Authority has the same meaning as in the Act.

Construction Certificate means a construction certificate within the meaning of s109C(1)(b) of the Act.

Contribution Value means the value of the Development Contribution as determined in accordance with Clause 11 of this Agreement including as otherwise adjusted to the date of provision in accordance with the Contributions Plan.

Consent Orders means the form of consent orders set out in Schedule 6.

Consultant has the same meaning as in the Records.

Contributions Plan means Botany Bay Section 94 Contributions Plan 2004, made by the City of Botany Bay Council under section 94EA of the Act and approved by that Council, and as subsequently amended or replaced.

Council Dedicated Park means the land to be dedicated to the Council in accordance with Item A2 of **Schedule 3**.

Council's Lawyer means HWL Ebsworth.

Cul - De - Sac Land means the land to be dedicated to the Council in accordance with Item A3 of **Schedule 3**.

Defect means a defect with respect to any item in Part B of **Schedule 3** which adversely affects the ordinary use and/or enjoyment of the particular item.

Development means a mixed use development on the Development Site, the subject of the Development Application, comprising 2 residential flat buildings ranging in height between 4 to 7 storeys containing 269 residential apartments and 2 retail tenancies comprising 323m² above 2 levels of basement car parking comprising 479 spaces.

Development Application means development application 2014/68/1 lodged with City of Botany Bay Council, including as amended.

Development Consent has the same meaning as in the Act.

Development Contributions means the dedication of land free of cost, the carrying out of the Works and the creation of the Easements and the Positive Covenant or the provision of any other material public benefit, or any combination of them by the Developer, to be used for, or applied towards, the provision of Public Infrastructure or another Public Purpose as set out in **Schedule 3**.

Development Site means the Land specified in **Schedule 2** on which the Development is proposed to be carried out and includes those areas that are to be dedicated in accordance with this Agreement. For the avoidance of doubt the Development Site for the purposes of this agreement is not based upon the definition of 'site area' under the LEP.

Easements means the easements created in accordance with clause 8, as also referred to in Item C of Schedule 3. .

First Defects Liability Period, in relation to an Item of Work is twelve (12) months commencing on the date on which the Developer Hands-Over the Item of Work to the Council under this Agreement.

GST has the same meaning as in the GST Law.

GST Law has the same meaning as in A New Tax system (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Hand-Over means the completion of the construction of an Item of Work in accordance with the requirements of the Council and the delivery or dedication of that Item of Work to the Council in accordance with this Agreement.

Hand-Over Date, in relation to an Item of Work, means the date specified in Column 4 of **Schedule 3** opposite the Item of Work specified in Column 1 of that Schedule.

Item of Work means an item of the Works as specified in **Schedule 3**.

Land means the land specified and described in **Schedule 2** and all other land that may be required to carry out the Works.

LPI means Land and Property Information New South Wales

LEP means the Botany Bay Local Environmental Plan 2013 and includes any local environmental plan applying to the Land that supersedes the Botany Bay Local Environmental Plan 2013.

Loss means any loss, claim, action, liability, damage, demands, cost, charge, which Council, its employees, officers, agents, contractors and workmen sustains, pays, suffers or incurs or is liable for arising in connection with the carrying out by the Developer of any Item of Work and the performance by the Developer of any obligation under this Agreement, including (but not limited to) reasonable legal and other expenses incurred in connection with investigating or defending any claim or action, whether or not resulting in any liability, and all amounts reasonably paid in settlement of any claim or action

New Street 1 Land means the land to be dedicated to the Council in accordance with Item A4 of **Schedule 3**.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this Agreement, including their successors, agents and assigns.

Pemberton Street Widening Land means the land to be dedicated to the Council in accordance with Item A1 of **Schedule 3**.

Permitted Encumbrances means any easements, covenants or restrictions affecting the land agreed to in writing by Council, including for the avoidance of doubt any:

(a) easements, covenants or restrictions under the *Conveyancing Act 1919* relating to rights of access and provision of services; and

(b) easements, covenants or restrictions under the *Conveyancing Act 1919* required by this Agreement or the development consent for the Development.

Positive Covenant means the positive covenant to be created in accordance with clause 8.

Public Facility means a public amenity, a public service, a public facility, public land, public infrastructure, a public road, a public work, or any other act, matter or thing that meets a Public Purpose.

Public Infrastructure has the same meaning as in the Act.

Public Purpose has the same meaning as in the Act.

Rectification Certificate means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed in accordance with the Rectification Notice.

Rectification Notice means a notice in writing that identifies a Defect in an Item of Work and requires rectification of the Defect within either the First Defects Liability Period or the Second Defects Liability Period.

Rectification Security means a bond or bank guarantee for 10% of the Security Amount.

Records means the Rockdale Technical Guide-Works-As-Executed Records.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Second Defects Liability Period in relation to an Item of Work is twelve (12) months commencing on the date that the First Defects Liability Period ends.

Security means a bond or bank guarantee for the Security Amount.

Security Amount means the amount determined in accordance with clause 11 adjusted annually in accordance with clause 7.4.

Service Provider means a provider of services relating to an Item of Work which must have the relevant expertise, experience, approvals, permits and licences to lawfully carry out or implement that Item.

Specifications means the specifications for the embellishment of the Council Dedicated Park set out in Schedule 8.

Strata Certificate has the same meaning as in the Strata Schemes Act.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

Toplace means Toplace Pty Limited ACN 138 918 491

Works means the works described in Part B of **Schedule 3**.

Works-As-Executed Records means a plan setting out a record of construction completed in accordance with the Rockdale Technical Guide – Works-As-Executed Records.

- 1.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 1.2.1 Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - 1.2.2 A reference to a **Business Day** means a day other than a **Saturday, Sunday or bank or public holiday in Sydney**.
 - 1.2.3 If the day on which any act, matter or thing is to be done under this Agreement is not a **Business Day**, the act, matter or thing must be done on the next business day.
 - 1.2.4 A reference to time is local time in **Sydney**,
 - 1.2.5 A reference to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars.
 - 1.2.6 A reference to a \$ value relating to a **Development Contribution** is a reference to the value exclusive of **GST**.
 - 1.2.7 A reference to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - 1.2.8 A reference to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - 1.2.9 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - 1.2.10 An expression importing a natural person includes any company, corporation, trust, partnership, joint venture, association, unincorporated association, body corporate, statutory body, statutory authority or governmental agency.
 - 1.2.11 Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - 1.2.12 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - 1.2.13 Reference to the word "include" or "including" are to be construed without limitation.
 - 1.2.14 A reference to this Agreement includes the agreement recorded in the Agreement.
 - 1.2.15 A reference to a party to this Agreement includes a reference to the personal representatives, legal representatives, agents and contractors of the party, and the party's successors and assigns substituted by novation.

1.2.16 Any schedules, appendices and attachments form part of this Agreement.

1.2.17 Notes appearing in the Agreement are operative provisions of this Agreement.

2. Application of this Agreement

2.1 This Agreement applies to:

2.1.1 the Development Site; and

2.1.2 the Development.

2.2 The Parties each agree that this Agreement is a Planning Agreement within the meaning of Section 93F of the Act.

3. Status and operation of this Agreement

3.1 This Agreement takes effects from the date this Agreement is executed by the Parties.

3.2 The parties agree that the Developer is not bound by this Agreement to provide the Development Contributions (as set out in **Schedule 3**) unless the Development is physically commenced as provided in section 95 of the Act.

4. Further agreements relating to this Agreement

4.1 The Parties may, at any time and from time to time, enter into agreements relating to the subject-matter of this Agreement that are not inconsistent with this Agreement for the purpose of implementing this Agreement.

4.2 A further agreement for the purpose of **clause 4.1** may include (but is not limited to) matters pertaining to:

4.2.1 access to the Development Site;

4.2.2 the rectification of Defects; and

4.2.3 detailed design and specification.

5. Surrender of right of appeal and disposal of proceedings

5.1 The Developer is not to commence or maintain, or cause to be commenced or maintained, any proceedings in the Land and Environment Court involving an appeal against, or questioning the validity of, a Development Consent relating to the Development or an approval under section 96 of the Act to modify a Development Consent relating to the Development to the extent that it relates to the existence of this Agreement or requires any aspect of this Agreement to be performed according to the terms of this Agreement.

5.2 Without limiting clause 5.1, the Developer must:

5.2.1 sign (or procure that its legal representative sign), and cause Toplace to sign (or procure that its legal representative sign) the Consent Orders on the date this Agreement is executed by the Parties; and

- 5.2.2 consent to the proceedings the subject to the Consent Orders being relisted to file the Consent Orders in order that those proceedings can be finally determined; and
 - 5.2.3 sign a Notice of Discontinuance in Land and Environment Court Proceedings No. 2017/ 321254 on the date this Agreement is executed by the parties (which the Council will consent to on the basis that each party pays its own costs); and
 - 5.2.4 file the said Notice of Discontinuance with the Land and Environment Court within 7 days of the date of signing the Notice of Discontinuance.
- 5.3 To the extent the Developer, or Toplace, complies with an obligation set out in the Consent Orders, the Developer is deemed to have complied with that same obligation to the extent that obligation is also set out in this Agreement.
- 5.4 The Council will consent to the Notice of Discontinuance referred to in **clause 5.2.4** being filed on the basis that each party pays its own costs.

6. Application of s94, s94A, s94EF of the Act to the Development

- 6.1 The parties each agree that this Agreement does not exclude the application of sections 94, 94A and 94EF of the Act in respect of the Development.
- 6.2 The Developer agrees that the Development Contributions are not to be taken into account in determining a development contribution under Section 94 of the Act.

Part 2 – Development Contributions

7. Provision of Development Contributions

- 7.1 **Schedule 3** has effect in relation to the Development Contributions to be made by the Developer under this Agreement.
- 7.2 The Developer must make the Development Contributions (as set out in **Schedule 3**) to Council in accordance with this Agreement.
- 7.3 The Council must apply each Development Contribution made by the Developer under this Agreement towards the Public Infrastructure or other Public Purpose for which it is made and otherwise in accordance with this Agreement.
- 7.4 The Contribution Value of the Development Contribution as determined in accordance with clause 11 is to be indexed in accordance with the Contributions Plan from the date of the Agreement, until provided or paid.
- 7.5 Despite **clause 7.1**, Council may apply a Development Contribution made under this Agreement towards a Public Purpose other than the purpose specified in this Agreement if Council considers that the public interest would be better served by applying the Development Contribution towards that other purpose rather than the purpose so specified.

8. Dedication of land, Creation of Easements and Positive Covenant and Registration of Construction Lease

- 8.1 The Development Contributions comprising the dedication of land to the Council is made for the purposes of this Agreement when an instrument in registrable form

under the *Real Property Act 1900* that is effective to transfer the title to the land to Council is registered at the LPI.

- 8.2 The Developer must at no cost to the Council, carry out all steps required to dedicate the land to the Council free from encumbrances in accordance with this Agreement, save for the Permitted Encumbrances.
- 8.3 For the purposes of **clause 8.2** but subject to **clause 17**:
- 8.3.1 the Developer must give Council, for execution by Council as transferee, an instrument of transfer under the *Real Property Act 1900* relating to each parcel of the land to be dedicated,
- 8.3.2 the Council must execute the instruments of transfer and return them to the Developer within 7 days of receiving it from the Developer,
- 8.3.3 the Developer must execute and lodge the instruments of transfer for registration at Land and Property Information (LPI) within 7 days of receiving it from Council duly executed,
- 8.3.4 the Developer must do all things reasonably necessary to enable registration of the instruments of transfer to occur as soon as practicable, and
- 8.3.5 the Developer must promptly notify the Council in writing of registration of the instruments of transfer at the LPI.
- 8.4 The Development Contributions comprising creation of the Easements and the Positive Covenant in favour of the Council is made for the purposes of this Agreement when an instrument in registrable form under the *Real Property Act 1900* is registered at the LPI in accordance with Division 4 of Part 7 of the Conveyancing Act 1919.
- 8.5 The Developer must at no costs to the Council, carry out all steps required to obtain registration of the Easements and the Positive Covenant in accordance with this Agreement.
- 8.6 The Easements referred to in Item C1 and C2 of **Schedule 3** must be in accordance with the terms specified in **Schedule 5A** and Items C1 and C2 of **Schedule 3**. The Easement referred to in Item C3 of **Schedule 3** must be in accordance with the terms specified in **Schedule 5B** and Item C3 of **Schedule 3**. The Positive Covenant must be upon the terms specified in Item A2 of **Schedule 3**.
- 8.7 For the purposes of **clause 17**:
- 8.7.1 the Developer must give Council, for execution by Council, the instruments under the *Real Property Act 1900* relating to each Easement to be created;
- 8.7.2 the Council must execute the instrument creating the Easements and return them to the Developer within 7 days of receiving it from the Developer;
- 8.7.3 the Developer must execute and lodge the instrument creating the Easements and the Positive Covenant at the LPI within 7 days of receiving it from the Council duly executed;
- 8.7.4 the Developer must do all things reasonably necessary to enable registration of the instrument creating the Easements and the Positive Covenant to occur as soon as practical; and

- 8.7.5 the Developer must promptly notify the Council in writing of registration of the instrument creating the Easements and the Positive Covenant at the LPI.
- 8.8 For the avoidance of doubt the Developer acknowledges and affirms its agreement to dedicate land free of cost as agreed to in the s 34 Agreement dated 12 December 2016 in accordance with the terms of the said agreement (unless otherwise modified by this Agreement).
- 8.9 Prior to the issue of any Occupation Certificate for any building within the Development, the parties will execute and register in favour of the Developer a lease for access and storage for construction purposes over the Council Dedicated Park to the exclusion of the public for a period expiring on the earlier of:
- 8.9.1 3.5 years from the date of dedication of the Council Dedicated Park in accordance with Item A2 of Schedule 3; or
- 8.9.2 the date of issue of any Occupation Certificate in relation to Buildings A1, A2, A3 and B1,
- with such lease to be in accordance with the terms specified in **Schedule 9**.

9. Design and Specification of an Item of Work

- 9.1 The Developer must engage a Service Provider for design and specification of each Item of Work.

10. Carrying out of an Item of Work

- 10.1 The Developer must produce a detailed design and specification for the Works in accordance with:
- 10.1.1 any reasonable lawful requirements and directions of the Council that are notified in writing to the Developer at any time before the Works are approved in accordance with this Agreement, and
- 10.1.2 the conditions of any development consent for the Development granted in relation to an Item of Work; and
- 10.1.3 the Specifications.
- 10.2 The Developer must not apply for a Construction Certificate from the Certifying Authority for an Item of Work until the Council (as the future owner of the Item of Work and not as a planning authority) has approved the detailed design and specification for the Works.
- 10.3 The Developer must carry out and complete each Item of Work or engage its Service Provider to carry out and complete each Item of Work, to the reasonable satisfaction of the Council, in accordance with:
- 10.3.1 the detailed design and specification approved by the Council,
- 10.3.2 all applicable laws, including those relating to occupational health and safety,
- 10.3.3 the conditions of any development consent granted in relation to the carrying out of that Item of Work; and
- 10.3.4 the conditions of the development consent for the Development.

11. Determination of Value

- 11.1 For the purpose of this Agreement, the Parties acknowledge that:
- 11.1.1 the Contribution Value in relation to Items B1 and B2 in Column 3 of **Schedule 3** is to be determined by a suitably qualified quantity surveyor in accordance with clauses 11.2 to 11.7 inclusive,
 - 11.1.2 the Contribution Value includes all costs associated with the provision of the completed Works, including the costs of design, project management, , quantity surveyor costs, the cost of the Consultant required under clause 12.2, construction and material costs, contingency, any remediation/ clean up of contamination costs with respect to the land upon which the Works are proposed, consultants, the quantity surveyor and any fees and charges incurred by the Developer; and
 - 11.1.3 the Contribution Value determined by the quantity surveyor must include an increase of ten percent (10%) above the cost of the Works.
- 11.2 Council will provide a list of three appropriately qualified independent quantity surveyors from which the Developer will nominate one which they have not had any dealings with in the prior three years. All parties will subsequently be required to abide the calculations of this quantity surveyor in accordance with clause 11.7.
- 11.3 When the Developer has prepared and submitted to the Council the design in respect of Items of Work specified in **Schedule 3**, the Council must, once it has approved the design, engage the quantity surveyor identified in clause 11.2 to determine the Contribution Value for the Item of Work. The parties agree that the Developer will be responsible for the payment of the quantity surveyor's costs.
- 11.4 Upon receipt of the calculations of the Contribution Value from the quantity surveyor, the Council must provide a copy of the calculations to the Developer.
- 11.5 The Developer may, within 30 days of the receipt of the calculations, make a submission to the Council in respect of the calculations.
- 11.6 Upon receipt of any submission from the Developer, the Council must provide a copy of the submission to the quantity surveyor, together with any submission it may make of its own.
- 11.7 The quantity surveyor must consider any submissions made by the Developer and the Council and must, within 14 days, at his sole discretion:
- 11.7.1 alter or amend the calculations and submit these altered or amended calculations to the Council, or
 - 11.7.2 decline to alter or amend the calculations and advise the Council to that effect.

12. Construction of an Item of Work

- 12.1 The Developer must engage a Service Provider for implementation/construction of each Item of Work and must implement/construct such Item of Work in accordance with the Building Code of Australia and the development consent for the Development in relation to that Item of Work.
- 12.2 The Developer must ensure that the carrying out of each Item of Work is supervised in accordance with the Records. A Consultant must be appointed:

- 12.2.1 where the Item of Work is to be constructed by a Service Provider under contract to the Developer, by the Developer, or
- 12.2.2 where the Item of Work is to be constructed by the Developer, by the Council.
- 12.3 The Developer must notify the Council within 5 business days of the issue of a corrective action request, non-conformance report or notice of non-conformance issued by the Consultant with respect to the Item of Work in accordance with **clause 12.1** and promptly undertake all corrective action with respect to such Item of Work as required by the Council.

13. Access to the Land

- 13.1 The Developer is to permit Council, its officers, employees, agents and contractors to enter the Land at any time, upon giving reasonable prior notice, in order to inspect, examine or test any Item of Work.
- 13.2 The Council is to permit the Developer to enter and occupy any land owned or controlled by Council for the purpose of enabling the Developer to carry out any Item of Work under this Agreement that is required to be carried out on such land or to perform any other obligation imposed on the Developer by or under this Agreement.

14. Protection of people and property

- 14.1 The Developer is to ensure to the fullest extent reasonably practicable in relation to the carrying out of any Work that:
 - 14.1.1 all necessary measures are taken to protect people and property, and
 - 14.1.2 unnecessary interference with the passage of people and vehicles is avoided, and
 - 14.1.3 nuisances and unreasonable noise and disturbances are prevented.

15. Hand-Over of Works

- 15.1 The Developer must submit to the Council the Works-as-Executed Records and written notice for an Item of Work not less than 10 business days prior to the date on which it proposes to Hand-Over of the Item of Work.
- 15.2 Council acting reasonably can, within 5 business days of receipt of the notice under clause 15.1,
 - 15.2.1 request information (in addition to the Works-as-Executed Records) that is relevant to the completion of the Item of Work and delay the Hand-Over of the Item of Work until the Developer has provided the additional information requested to Council's reasonable satisfaction, or
 - 15.2.2 determine that the Item of Work has not met the detail design and specification approved by Council under clause 10 and issue an Rectification Notice implemented in accordance with **clause 18**.
- 15.3 On Hand-Over of an Item of Work:

- 15.3.1 the Developer must ensure that an unencumbered title to each Item of Work passes to Council and must give to Council any document of title to each Item of Work;
- 15.3.2 Council accepts ownership, possession and control of that Item of Work; and
- 15.3.3 Council returns to the Developer the Security less the Rectification Security for that Item of Work (alternatively, if the Developer provide a new bond or bank guarantee for the Rectification Security, Council must release the whole of the Security).

16. Failure to Comply with the Hand-Over Date

- 16.1 If the Developer fails to Hand-Over an Item of Work by the Hand-Over Date the Council may:
 - 16.1.1 if it considers, acting reasonably, that the Item of Work is complete, exercise its rights under **clause 17**; or
 - 16.1.2 if it considers, acting reasonably, that the Item of Work is incomplete, call upon the Security, and

carry out and complete the Item of Work itself.
- 16.2 For the purposes of **clause 16.1.2**:
 - 16.2.1 the Developer must allow the Council, its servants, agents and contractors to enter the Land at any time for the purpose of completing the relevant Item of Work, and
 - 16.2.2 any difference between the Security called upon by the Council and the costs incurred by the Council in completing the Item of Work may be recovered by the Council from the Developer as a liquidated debt due and owing in a court of competent jurisdiction;
 - 16.2.3 any remaining Security must be returned to the Developer by the Council as soon as possible, after deduction of the Rectification Security or the provision of a replacement bond or bank guarantee for the Rectification Security.
- 16.3 If the Developer fails to Hand-Over an Item of Work by the Hand-Over Date the Developer irrevocably appoints the Council as its attorney to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable an Item of Work to be Handed-Over to the Council in accordance with this Agreement.

17. Escrow Arrangements

- 17.1 As security for the dedication of the Council Dedicated Park, the Cul - De - Sac Land and the Pemberton Street Widening Land to Council and creation of the Easements and the Positive Covenant in accordance with this Agreement (except for the easement burdening the New Street 1 Land referred to in Item C3 of **Schedule 3**), the Developer agrees to provide the Council's Lawyer prior to the issue of the Above Ground Construction Certificate with the instruments referred to in clauses 8.3 and 8.7 executed by the Developer and the Grantor as regards the Positive Covenant, which instruments will be held in escrow by the Council's Lawyer. For the purpose of the dedication, the Council's Lawyer will release the signed instruments to the Developer for registration in accordance with clause 8.

- 17.2 In the event that the Developer fails to dedicate the Council Dedicated Park, the Cul - De - Sac Land and the Pemberton Street Widening Land to Council and create the Easements (except for the easement burdening the New Street 1 Land referred to in Item C3 of **Schedule 3**) and the Positive Covenant in accordance with the terms of this Agreement:
- 17.2.1 the instruments held in escrow by the Council's Lawyer under clause 17.1 may be released to the Council and Council may proceed to effect registration of the instruments; and
- 17.2.2 the Developer must promptly cause the Certificates of Title to be produced at the LPI together with a Discharge of any registered Mortgage over these titles.
- 17.3 As security for the dedication of the New Street 1 Land to Council and the creation of the easement burdening the New Street 1 Land referred to in Item **C3 of Schedule 3**, the Developer agrees to provide the Council's Lawyer at the time of the execution of this Agreement with the instruments referred to in clauses 8.3 and 8.7 executed by the Developer, which instruments will be held in escrow by the Council's Lawyer. For the purpose of the dedication, the Council's Lawyer will release the signed instruments to the Developer for registration in accordance with clause 8.
- 17.4 In the event that the Developer fails to create the easement burdening the New Street 1 Land referred to in Item **C3 of Schedule 3** in accordance with the terms this Agreement or fails to dedicate the New Street 1 Land in accordance with the terms of this Agreement:
- 17.4.1 the instruments held in escrow by the Council's Lawyer under clause 17.3 may be released to the Council and Council may proceed to effect registration of the instruments; and
- 17.4.2 the Developer must promptly cause the Certificates of Title to be produced at the LPI together with a Discharge of any registered Mortgage over these titles.
- 17.5 The Developer must reimburse the Council, promptly on demand, an amount equivalent to all reasonable legal costs (assessed on an indemnity basis) and disbursements incurred by the Council in acquiring the land and creating the Easements pursuant to this **clause 17**.

18. Rectification of Defects

- 18.1 During the First Defects Liability Period and the Second Defects Liability Period, the Council may give to the Developer a Rectification Notice.
- 18.2 The Developer must promptly comply with a Rectification Notice at its own cost according to the terms of the Notice.
- 18.3 When the Developer considers that rectification is complete, the Developer must give to the Council a Rectification Certificate relating to the Item of Work the subject of the relevant Rectification Notice.
- 18.4 Council acting reasonably can, within 14 business days of receipt of a Rectification Notice:
- 18.4.1 request information that is relevant to the completion of the work the subject of the Rectification Notice until the Developer has provided the additional information requested to Council's reasonable satisfaction, or

- 18.4.2 determine that the work the subject of the Rectification Notice has not been satisfactorily carried out and issue a further Rectification Notice in accordance with this clause 18; or
 - 18.4.3 determine that the work the subject of Rectification Notice has been satisfactorily completed and certify the Rectification Certificate in writing.
- 18.5 A Rectification Certificate that has been certified by the Council in writing discharges the Developer from any further obligation to comply with the relevant Rectification Notice.
- 18.6 If the Developer does not comply with a Rectification Notice, the Council may do such things as are necessary to rectify the Defect and may:
- 18.6.1 In the case of a Rectification Notice issued during the First Defects Liability Period, call upon the Rectification Security to meet its costs in rectifying the defect, and
 - 18.6.2 recover, as a liquidated debt due and owing in a court of competent jurisdiction, any costs incurred by the Council in rectifying the Defect or, in the case of a Defect to which clause 18.6.1 applies, the difference between the amount of the Security called upon and the costs incurred by the Council in rectifying the Defect.
- 18.7 If the Developer does not comply with a Rectification Notice the Developer irrevocably appoints the Council as its attorney to execute all such documents and do all such things on the Developer's behalf as are necessary or desirable to enable the Council to rectify any Defects in accordance with a Rectification Notice given under this Agreement.
- 18.8 Promptly after the expiration of the First Defects Security Period, Council must return to the Developer any unused portion of the Rectification Security. If any Rectification Notice is outstanding at this time, Council may retain a reasonable amount of the Rectification Security relevant to the Defect in question. In this case, and remaining Rectification Security must be returned promptly to the Developer on the issue of a Rectification Certificate that resolves that outstanding Rectification Notice.

19. Damage and repairs to Work

- 19.1 The Developer, at its own cost, is to repair and make good to the satisfaction of Council any Loss or damage to an Item of Work from any cause whatsoever which occurs prior to the date on which the Item of Work has been Handed-Over to Council under this Agreement.

20. Variation of Work

- 20.1 An Item of Work is not to be varied by the Developer, unless:
 - 20.1.1 the Parties agree in writing to the variation, and
 - 20.1.2 any consent or approval required under the Act or any other law to the variation is first obtained, and
 - 20.1.3 the Developer bears all of Council's costs of and incidental to agreeing to and approving the variation under this Agreement.
- 20.2 For the purposes of **clause 20.1**, a variation may relate to any matter in relation to the Works that is dealt with by this Agreement.

Part 3 – Other Provisions

21. Indemnity and insurance

- 21.1 This clause applies until the expiration of the First Defects Liability Period and the Second Defects Liability Periods only.
- 21.2 The Developer indemnifies Council from and against all Loss, except to the extent that any Loss is caused or contributed to by the deliberate or negligent act or omission of Council, its employees, officers, agents, contractors and workmen.
- 21.3 The Developer is to take out and keep current to the reasonable satisfaction of Council the following insurances in relation to Work required to be carried out by the Developer under this Agreement up until the Work is taken to have been completed in accordance with this Agreement:
- 21.3.1 contract works insurance; noting Council as an interested party, for the full replacement value of the Works (including the cost of demolition, removal of debris, and remediation, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
- 21.3.2 public liability insurance for at least \$20,000,000 for a single occurrence, which covers Council, the Developer and any subcontractor of the Developer, for liability to any third party,
- 21.3.3 workers compensation insurance as required by law, and
- 21.3.4 any other insurance required by law.
- 21.4 If the Developer fails to comply with clause 21.3, Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a liquidated debt due from the Developer to Council and payable within 30 days after providing an invoice and which may be recovered as a liquidated debt due in a court of competent jurisdiction.
- 21.5 The Developer is not to commence to carry out any Work unless it has first provided to Council satisfactory written evidence of all of the insurances specified in clause 21.3.

22. Provision of Security

- 22.1 The Parties agree that the obligation to carry out the Works will be secured by provision of the Security by the Developer to Council prior to the issue of any Occupation Certificate.
- 22.2 The Parties agree in respect of the Items of Works identified in Schedule 3 and the Security that, where Council is the certifying authority, it may withhold the issue of the relevant Occupation Certificate (as appropriate) until such time as the identified Item of Work is completed or the Security is provided.
- 22.3 The Developer agrees and acknowledges that where the Council is not appointed as the certifying authority, it:
- 22.3.1 will provide a copy of this Agreement to the certifying authority at the time of appointment of the certifying authority under s 81A of the Act, with a copy of the correspondence to the certifying authority to be immediately provided to Council;

22.3.2 will not make any application for any Construction Certificate or any Occupation Certificate in breach of its obligations under this agreement and the terms this Agreement.

22.4 The Developer agrees and acknowledges that if it is in breach of any of its obligations under this Agreement, Council may in its absolute discretion refuse to grants any necessary approvals required in order to allow strata subdivision of any buildings in the Development.

22.5 In the event that the Developer does not comply with its obligations to remove the bollards and associated kerbing and reinstate to Council's satisfaction within 7 days of the date of this Agreement pursuant to Item B3 of Schedule 3, the Council may carry out the works itself at its cost, and may recover this cost as a liquidated debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction. If a debt is outstanding pursuant to this clause, no Construction Certificate may be issued unless the debt is paid by the Developer to Council.

23. Release & return of Security

23.1 Subject to clause 18.8, the Council is to release the Security to the Developer as soon as practical following Hand-Over, but may retain the Rectification Security (which can be provided by the Developer as a new bond or bank guarantee in exchange for a full release of the Security) until the end of the First Defects Liability Period.

24. Recovery of cost of rectification carried out by Council

24.1 If Council incurs a cost in rectifying a Defect in an Item of Work, it may draw on the Rectification Security in accordance with **clause 22** or alternatively, this cost shall be a liquidated debt due and payable by the Developer to Council within 30 days after the production of an invoice and which may be recovered by Council from the Developer in a court of competent jurisdiction.

24.2 For the purpose of **clause 24.1**, Council's costs of rectifying a Defect in an Item of Work includes, but is not limited to:

24.2.1 the reasonable costs of Council's officers, personal representatives, agents and contractors reasonably incurred for that purpose,

24.2.2 all fees and charges necessarily or reasonably incurred by Council in order to have the Item of Work rectified, and

24.2.3 without limiting **clause 24.2.2**, all legal costs (assessed on an indemnity basis) and expenses reasonably incurred by Council, by reason of the Developer's failure to comply with this Agreement.

25. Enforcement in a court of competent jurisdiction

25.1 Without limiting any other provision of this Agreement, the Parties may enforce this Agreement in any court of competent jurisdiction.

25.2 For the avoidance of doubt, nothing in this Agreement prevents:

25.2.1 a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates,

25.2.2 Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

26. Dispute resolution – expert determination

- 26.1 This clause applies to a dispute under this Agreement which relates to a matter that can be determined by an appropriately qualified expert.
- 26.2 Any dispute between the parties as to whether a dispute to which this clause applies can be determined by an appropriately qualified expert is to be referred to the Chief Executive Officer of the professional body that represents persons with the relevant expertise for determination, which is to be final and binding on the Parties.
- 26.3 Such a dispute is taken to arise if one Party gives another party a notice in writing specifying particulars of the dispute.
- 26.4 If a notice is given under **clause 26.3**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 26.5 If the dispute is not resolved within a further 28 days, the dispute must be referred to the President of the NSW Law Society to appoint an Expert for Expert Determination.
- 26.6 The Expert Determination is binding on the parties except in the case of fraud or misfeasance by the Expert.
- 26.7 Each Party must bear its own costs arising from or in connection with the appointment of the Expert and the Expert Determination.
- 26.8 This clause survives the completion or termination of this Agreement.

27. Dispute resolution – mediation

- 27.1 This clause applies to any dispute under this Agreement other than a dispute to which **clause 26.5** applies.
- 27.2 Such a dispute is taken to arise if on party gives another Party a notice in Writing specifying particulars of the dispute.
- 27.3 If a notice is given under **clause 27.2**, the Parties are to meet within 14 days of the notice in an attempt to resolve the dispute.
- 27.4 If the dispute is not resolved within a further 28 days, the Parties must mediate the dispute in accordance with the Mediation rules of the Law Society of New South Wales published from time to time and must request the President of the law Society, or the President's nominee, to select a mediator.
- 27.5 If the dispute is not resolved by mediation within a further 28 days, or such longer period as may be necessary to allow any mediation process which has been commenced to be completed, then the Parties may exercise their legal rights in relation to the dispute, including by the commencement of legal proceedings in a court of competent jurisdiction in New South Wales.
- 27.6 This clause survives the completion or termination of this Agreement.

28. Registration of this Agreement

- 28.1 The Parties agree that this Agreement is to be registered for the purposes of section 93H of the Act
- 28.2 The Developer must lodge this Agreement for registration on the Register pertaining to the Land no later than 28 days after the date of this Agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land;
- 28.3 The Developer must use all reasonable endeavours to obtain such registration as soon as practicable and promptly after registration, deliver to the Council a title search of the Land confirming registration of this Agreement.
- 28.4 The Parties will take all practical steps to procure:
- 28.4.1 the consent of each person who:
- A. has an estate or interest in the Land registered under the Real Property Act 1900 (NSW) or
- B. is seized or possessed of an estate or interest in the Land, and
- 28.4.2 the execution of any documents, and
- 28.4.3 the production of the relevant duplicate certificates of title,
- to enable the registration of this Agreement under the Real Property Act 1900 (NSW) in the relevant folios of the register for the Developer's Land in accordance with section 93H of the Act.
- 28.5 The Developer warrants to the Council that:
- 28.5.1 it has provided the current mortgagee(s) for the Land with a copy of this Agreement; and
- 28.5.2 it has advised the current mortgagee(s) for the Land of the obligations under this Agreement to register the Agreement over the Land and dedicate part of the Land; and
- 28.5.3 it has obtained the written consent of the current mortgagee(s) for the Land to:
- A. the registration of this Agreement over the Land in accordance with this **Clause 28**; and
- B. to undertake all such things as are necessary to facilitate the dedication of part Land as required by this Agreement; and
- 28.5.4 it will provide a copy of the written consent referred to in the preceding **Clause 28.5.3** to the Council at the time of execution of this Agreement.
- 28.6 The Developer further covenants and agrees with the Council that pending registration of this Agreement the Council shall be entitled to register a caveat at LPI over the titles comprising the Land to protect its interest therein pursuant to this Agreement.
- 28.7 The Council agrees that, as soon as this Agreement is registered, the Council will immediately withdraw its caveat over the Land.

28.8 Release and discharge of deed by Council

The Council must promptly do all things reasonably required by the Developer to release and discharge this Agreement with respect to any part of the Land (such that this Agreement is no longer registered by the Registrar-General under section 93H of the Act in relation to that part of the Land) upon the earlier of:

- 28.8.1 the issuing of a Strata Certificate in respect of any Strata Plan, provided that the Developer is otherwise in compliance with this Agreement to the reasonable satisfaction of the Council at that time,
- 28.8.2 the lapse or surrender of the development consent for the Development, or
- 28.8.3 the Developer having provided all of the Development Contributions in accordance with this Agreement.

28.9 Registration of Strata Plans

- 28.9.1 This Agreement will not remain or be newly registered by the Registrar-General under section 93H in relation to any newly created strata lot, subject to the Developer being in compliance with this Agreement to the reasonable satisfaction of the Council at that time.
- 28.9.2 For each Strata Plan lodged with the office of the Registrar-General, where that Strata Plan is intended to create a strata lot(s), the Council must do all things reasonably required by the Developer to ensure that this Agreement is not registered by the Registrar-General under section 93H of the Act in relation to any such lot.
- 28.9.3 If through error or other reason this Agreement is registered on the title to any strata lot, each party must do such things as are reasonably necessary, within 5 Business Days after being requested by the other, to facilitate the lodging and grant of a request for the registration of this Agreement to be removed from the title to that lot

29. Assignment and transfer

- 29.1 Unless the matters specified in **clause 29.2** are satisfied, the Developer is not to do any of the following:
 - 29.1.1 if the Developer is the owner of the Land, to transfer the Land to any person, or
 - 29.1.2 assign, transfer dispose or novate to any person the Developer's rights or obligations under this Agreement
- 29.2 The matters required to be satisfied for the purposes of **clause 29.1** are as follows:
 - 29.2.1 the Developer has, at no cost to Council, first procured the execution by the person to whom the Developer's rights or obligations under this Agreement are to be assigned or novated, of an agreement in favour of the Council on terms satisfactory to Council acting reasonable, and
 - 29.2.2 Council, by notice in writing to the Developer, has stated that evidence satisfactory to Council has been produced to show that the assignee or novatee, is reasonably capable of performing its obligations under the Agreement,
 - 29.2.3 the Developer is not in breach of this Agreement, and

29.2.4 Council otherwise consents to the transfer, assignment or novation in writing.

29.3 Any purported dealing in breach of this clause 29.2 is of no effect.

29.4 Notwithstanding **clause 29.1** the Developer may enter into a contract for sale, and may sell and transfer to a transferee part of the Land forming a strata lot in a proposed Strata Plan, without compliance with **clause 29.2**.

30. Review of this Agreement

30.1 The Developer is to provide to Council by not later than each anniversary of the date on which this Agreement is entered into, a written report detailing the performance of its obligations under this Agreement.

30.2 The report referred to in **clause 30.1** is to be in such a form and to address such matters as may be notified by Council to the Developer from time to time.

30.3 The Parties agree to review this Agreement every 2 years, and otherwise if either Party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.

30.4 For the purposes of **clause 30.3**, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables Council or any other planning authority to restrict or prohibit any aspect of the Development.

30.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in **clause 30.3** the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.

30.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.

30.7 A failure by a Party to agree to take action requested by the other party as a consequence of a review referred to in **clause 30.3** is not a dispute for the purposes of **clauses 26** and **27** and is not a breach of this Agreement.

31. Notices

31.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:

31.1.1 delivered or posted to that Party at its address set out in the Contacts Sheet,

31.1.2 faxed to that Party at its fax number set out in the Contacts Sheet.

31.2 If a Party gives the other Party 3 Business Days notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.

31.3 Any notice, consent, information, application or request is to be treated as given or made if it is;

31.3.1 delivered, when it is left at the relevant address.

- 31.3.2 sent by post, 2 Business Days after it is posted.
- 31.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.
- 31.3.4 sent via email (unless the sender receives notification to the effect that the email has failed to send).
- 31.4 If any notice, consent, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

32. Approvals and consent

- 32.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 32.2 A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

33. Costs

- 33.1 The Developer is required to pay to Council the Council's reasonable legal costs (assessed on an indemnity basis) and out of pocket disbursements of preparing, negotiating, executing and stamping this Agreement, and any document related to this Agreement within 20 business days of a written demand by Council for such payment.
- 33.2 The Developer is also required to pay to Council a contribution of \$500 towards Council's costs of preparing the template document on which this Agreement is based within 7 days of a written demand by Council for such payment.
- 33.3 The Developer is also required to pay to Council the Council's reasonable legal costs (assessed on an indemnity basis) and out of pocket disbursements of enforcing this Agreement within 20 business days of a written demand by Council for such payment except in the case of a dispute that is the subject of court proceedings, in which case any costs will be paid in accordance with orders of the court only.

34. Entire Agreement

- 34.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 34.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

35. Further acts

- 35.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to effect, perfect or complete this Agreement and all transactions incidental to it.

36. Governing law and jurisdiction

- 36.1 This Agreement is governed by the law of New South Wales.
- 36.2 Each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of its courts and courts of appeal from them.
- 36.3 Each party waives any right to object to the exercise of jurisdiction by those courts on any basis.

37. Joint and individual liability and benefits

- 37.1 Except as otherwise set out in this Agreement:
 - 37.1.1 any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and
 - 37.1.2 any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

38. No fetter

- 38.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

39. Representations and warranties

- 39.1 Each Party represent and warrant to each other Party that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

40. Severability

- 40.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 40.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

41. Modification

- 41.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

42. Waiver

- 42.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.

42.2 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.

42.3 It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

43. Rights cumulative

43.1 Except as expressly stated otherwise in this Agreement, the rights to a Party under this Agreement are cumulative and are in addition to any other rights of that Party.

44. Duty

44.1 The Developer as between the Parties is liable for and must pay all duty (including any fine or penalty except where it arises from default by another Party) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it.

44.2 If a Party other than the Developer pays any duty (including any fine or penalty) on or relating to this Agreement, any document executed under it or any dutiable transaction evidenced or effected by it as a result of the Developer first failing to pay such duty, the Developer must pay that amount to the paying Party on demand.

45. Effect of Schedules

45.1 Each Party agree to comply with any terms contained in the Schedules to this Agreement as if those terms were included in the operative part of the Agreement.

46. Relationship of the Parties

46.1 This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.

47. GST

47.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law excluding (except where expressly agreed otherwise) a Supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount on GST on that Supply.

- 47.2 Subject to **clause 47.4**, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 47.3 **Clause 47.2** does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 47.4 No additional amount shall be payable by Council under **clause 47.2** unless, and only to the extent that, Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.
- 47.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to division 81 of the *A New Tax System (Goods and Services Tax) Act 1999*, each Party agrees:
- 47.6 to negotiate in good faith to agree the GST inclusive market value of those Supplies prior to issuing Tax Invoices in respect of those Supplies;
- 47.7 that any amounts payable by each Party in accordance with **clause 47.2** (as limited by **clause 47.4**) to each other in respect of those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 47.8 No payment of any amount pursuant to this **clause 47**, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note as the case may be to the recipient.
- 47.9 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability.
- 47.10 This clause continues to apply after expiration or termination of this Agreement.

48. Explanatory Note relating to this Agreement

- 48.1 The **Schedule 1** of the **Appendix** contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 48.2 Pursuant to clause 25E(7) of the Regulation, each Party agrees that the Explanatory Note in **Schedule 1** of the **Appendix** is not to be used to assist in construing this Planning Agreement.

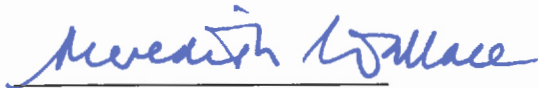
Execution

Executed as an Agreement at Rockdale

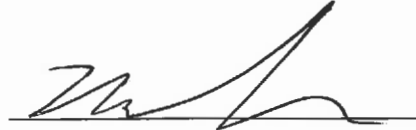
12

date: December 2017

Executed on behalf of Bayside Council:



General Manager (sign)



Witness (sign)

Meredith Wallace

Name of General Manager (print)

MICHAEL MCCABE - DIRECTOR, CITY FIGURES

Witness – Name/Position (print)

Executed on behalf of the Developer under s 127 of the *Corporations Act 2001*:

JKN Australia Pty Limited
ACN 151 283 635

Director (sign)

Director/Secretary (sign)

Name of Director (print)

Name of Director/Secretary (print)

Execution

Executed as an Agreement at Sydney ~~Rockdale~~

date: 12 December 2017

Executed on behalf of Bayside Council:

General Manager (sign)

Witness (sign)

Meredith Wallace

Name of General Manager (print)

Witness – Name/Position (print)

Executed on behalf of the Developer under s 127 of the *Corporations Act 2001*:

**JKN Australia Pty Limited
ACN 151 283 635**

Director (sign)



Director/Secretary (sign)

Name of Director (print)

Jean Nassif

Name of Director/Secretary (print)

Schedule 1: Section 93F Requirements

(Clause 6)

Section 93F Requirements

Provision of the Act	This Agreement
Under section 93F(1), the Developer has:	
(a) sought a change to an environmental planning instrument	No
(b) made, or proposes to make, a Development Application.	(b) yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies	(c) no
Description of the land to which this Agreement applies – Section 93F(3)(a)	The whole of the Land described in Schedule 2 to this Agreement
Description of the change to the environmental planning instrument to which this Agreement applies – (Section 93F(3)(b)(i))	Not Applicable
The scope, timing and manner of delivery of Development Contributions required by this Agreement – (Section 93F(3)(c))	See Schedule 3 to this Agreement
Applicability of Sections 94 and 94A of the Act – (Sections 93F(3)(d) and 93F(5A))	Not excluded
Applicability of Section 94EF of the Act – (Section 93F(3)(d))	Not excluded

Benefits under the Agreement considered for Section 94 purposes – (Section 93F(3)(e)),	Not Applicable
Dispute Resolution – (Section 93F(3)(f))	See clauses 26 & 27
Security & Enforcement of this Agreement – (Section 93F(3)(g))	See clauses 22, 23, & 25
Registration of the Agreement – (Section 93H)	Yes, see clause 28
Restriction on dealings	See clause 29
No obligation to grant consent or exercise functions – (Section 93F(9))	See clause 38

Schedule 2: The Land

(Clause 1)

The Land

Lot 2 DP913863

Lot 1 DP772878

Lot 4 DP1192005

Lot 2 DP1207144

Lot 1 DP913863

Lot 1 DP656310

Part Lot B402187

Lot 5 DP1192005

Lot 3 DP1207144

Lot 4 DP1203451

Schedule 3: Development Contributions

(Clause 7)

Part A: Land Dedications

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value ⁽¹⁾	Timing
A			
A1	Dedication of land to the Council for the widening of Pemberton Street to the East so as to align with the "FUTURE SITE BOUNDARY" indicated on the plans subject of the Development Application and as shown in yellow on the plan included in Item A1 of Schedule 4 .	NA	Prior to the issue of any Occupation Certificate for any building within the Development.
A2	Dedication of land of approximately 2800m ² (excluding land that forms part of SP91307 as at 12 December 2016) to the Council as "public park" and associated "through site links" as indicated by red hatching (park) and blue shading (through site links) on the plans entitled "COUNCIL DEDICATED PARK" dated 31 October 2016 and the site analysis plan as shown on the plans included in Item A2 of Schedule 4 subject to: (a) registration of a positive covenant in favour of Council, and burdening either the future owner's corporation with respect to the Development or SP 89302, in a form suitable to the Council, requiring the maintenance in perpetuity of the drainage infrastructure benefitting SP 89302 located on the land to be dedicated, with Council	NA	Prior to the issue of any Occupation Certificate for any building within the Development.

	<p>being the nominated as to only party with the ability to vary or release the covenant;</p> <p>(b) securing the registration of an easement to drain water (as referred to in Part 3 of Schedule 8 of the Conveyancing Act 1919) in favour of SP 89302 with respect to the drainage infrastructure located on the land to be dedicated.</p>		
A3	<p>Dedication as a public road of the land identified as CUL-DE-SAC indicated by red hatching on the plan entitled "COUNCIL DEDICATED PARK dated 31 October 2016 as shown on the plan included in Item A3 of Schedule 4.</p> <p>To the extent that the land to be dedicated contains drainage infrastructure benefitting SP 89302, dedication is to be subject to a positive covenant and easement in the same terms as referred to in Item A2(a) and (b) above.</p>	NA	Prior to the issue of any Occupation Certificate for any building within the Development..
A4	<p>Dedication of the New Street 1 Land, being Lot 4 DP 1203451 (known as New Street 1 or Mahroot Street) to Council as a public road.</p>	NA	Prior to the issue of any Occupation Certificate for any building within the Development.

Part B: Works

Column 1	Column 2	Column 3	Column 4
Item	Public Benefit	Contribution Value ⁽¹⁾	Timing
B			

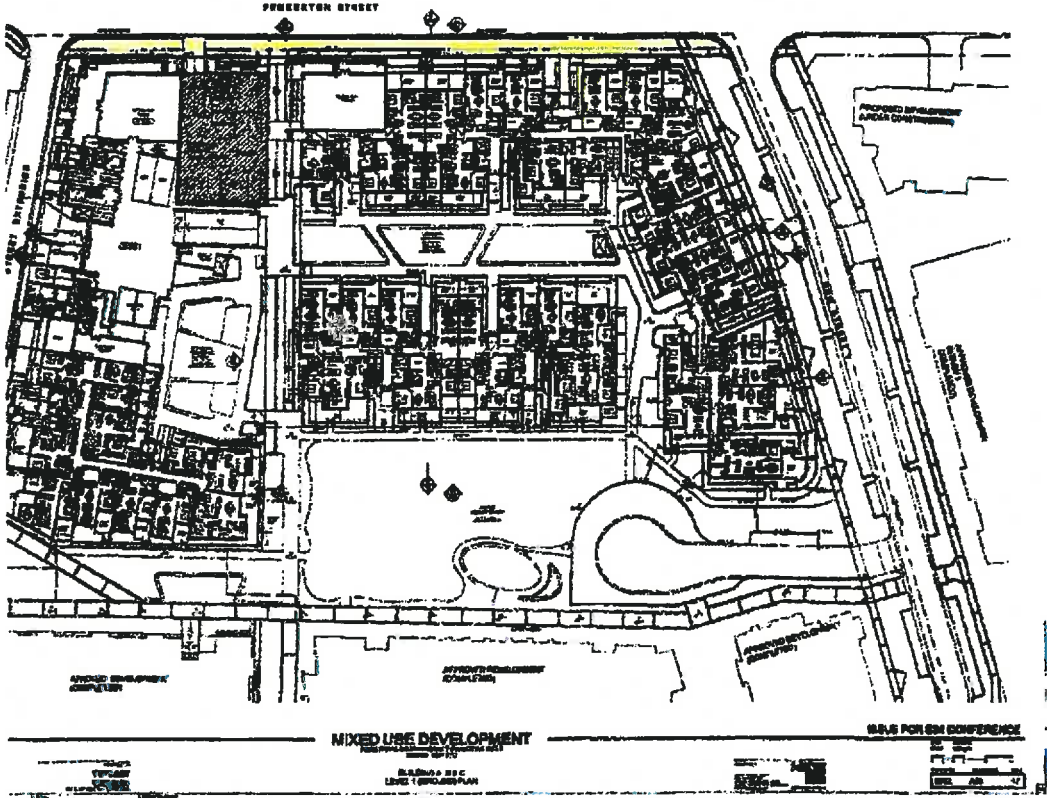
B1	Provide half road reconstruction of Pemberton Street (including new footpath, kerb, gutter and verge).	\$NA	Prior to the issue of any Occupation Certificate for any building within the Development.
B2	Embellishment of the Dedicated Council Park (including soft and hard landscaping, furniture and lighting) in accordance with the approved landscape plan.	\$NA	Prior to the issue of any Occupation Certificate in relation to Buildings A1, A2, A3 and B1.
B3	Removal of the bollards and associated kerbing installed by Toplace at the western end of the New Street 1 Land, as shown on the survey which is at Schedule 7, with the road surface to be re-instated to the satisfaction of Council in writing	NA	Within 7 days of the date of this Agreement. In the event that the said bollards and kerbing are not removed within 7 days of the date of this Agreement, in breach of this Agreement, the said bollards and kerbing must at the latest be removed and the road re-instated to the written satisfaction of Council prior to the issue of any Construction Certificate in relation to the Development.
Part C: Easements			
C1	Register in favour of the Council, perpetual access rights by members of the public by foot over the area indicated in blue on the plan included in Item C1 of Schedule 4 with a maximum width of 3 metres.	NA	Prior to the issue of any Occupation Certificate for any building within the Development.

C2	Register in favour of the Council perpetual access rights by members of the public by foot over the area of land indicated in blue as shown on the plan indicated in Item C2 of Schedule 4 with a maximum width of 3 metres.	NA	Prior to the issue of any Occupation Certificate in relation to Buildings A1, A2, A3 and B1.
C3	Register in favour of the Council perpetual access rights by members of the public over the New Street 1 Land, being Lot 4 DP 1203451 (known as New Street 1 or Mahroot Street), with the Council to have all such rights as it would have were the said land to be dedicated to the Council as a public road.	NA	Prior to the issue of any Construction Certificate in relation to the Development and in any event no later than 28 days from the date of execution of this Agreement.

(1) For the purposes of this Planning Agreement the Contribution Value where required is to be determined in accordance with Clause 11.

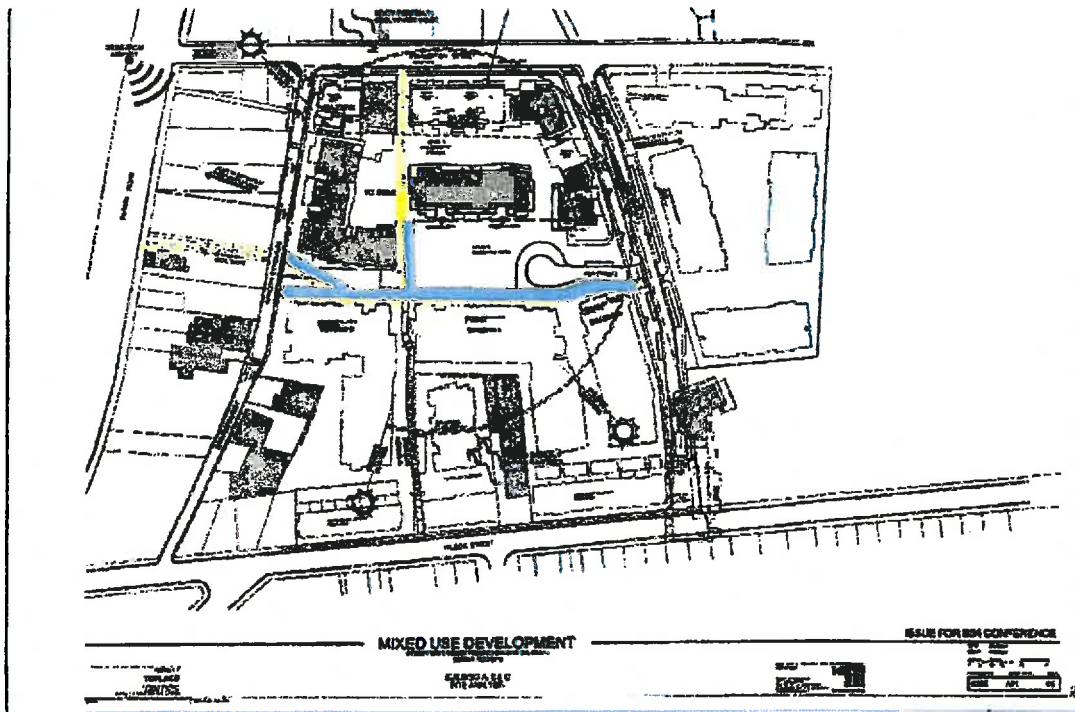
Schedule 4: Plans

A1 Dedication of Land for widening of Pemberton Street



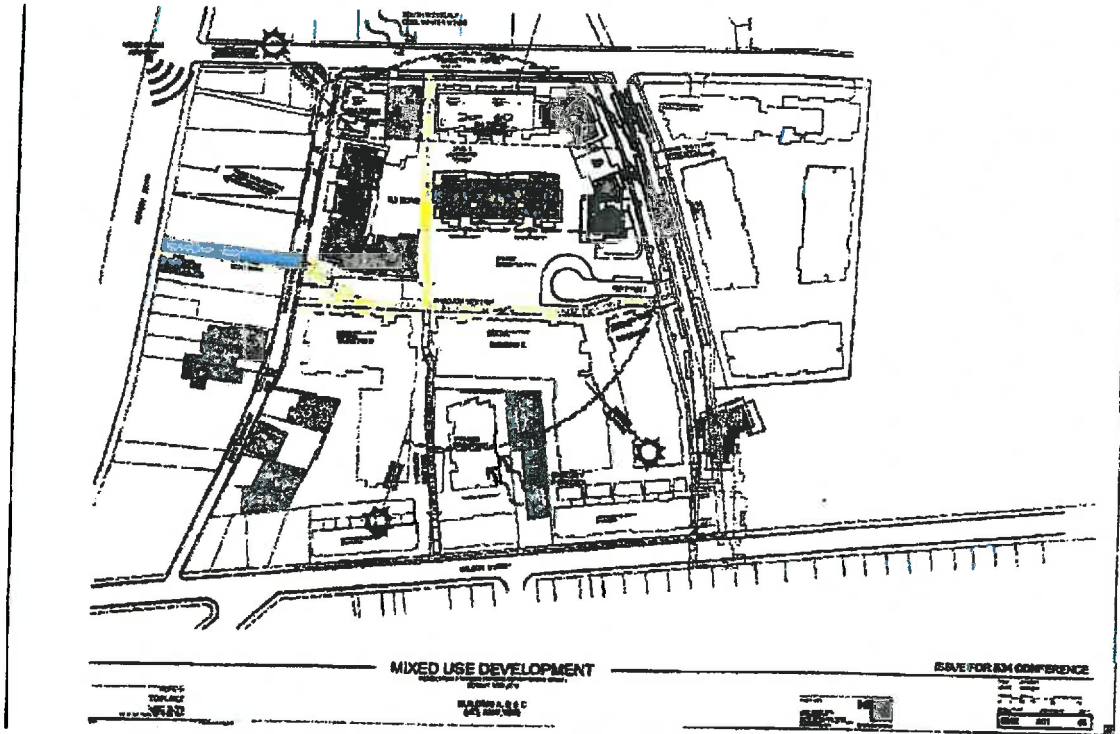


SK150825-50-REV B
COUNCIL DEDICATED PARK
SCALE 1:800 @ A3 DATE: 21 OCT 2016
PROPOSED MIXED USE DEVELOPMENT
AT PEMBERTON & WILSON STREET DISTRICT, BOTANY

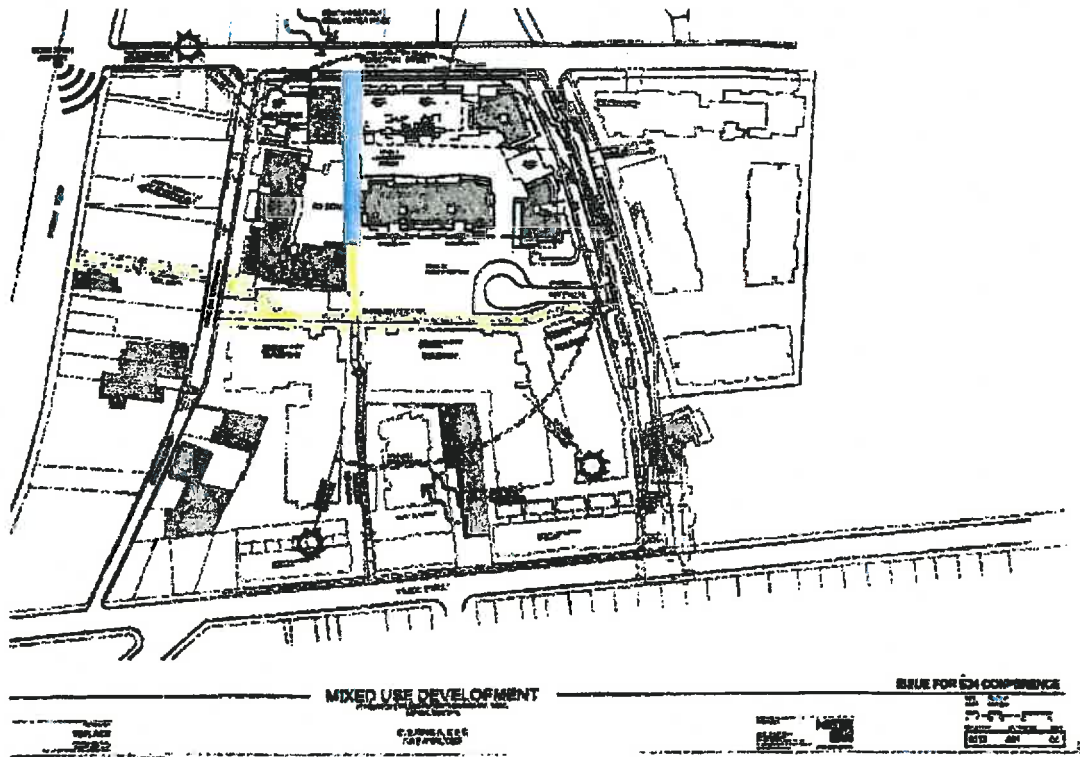


MIXED USE DEVELOPMENT
ISSUE FOR BSA CONFERENCE
GARDNER & THEARTER

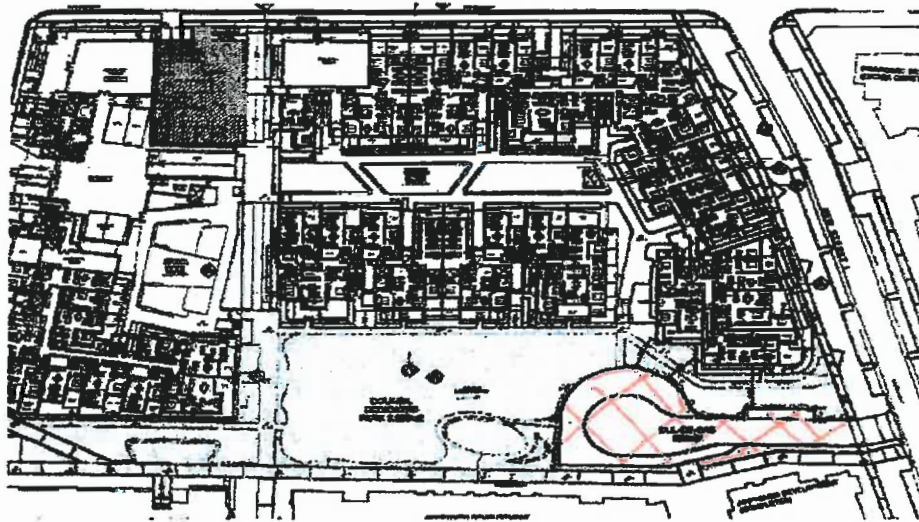
C1 Easement for Access



C2 Easement for Access



A3 Dedication for Public Road



SK150825-50-REV B
COUNCIL DEDICATED PARK
SCALE 1:600 @ A3 DATE: 31 OCT 2018
PROPOSED MIXED USE DEVELOPMENT
AT PEMBERTON & WILSON STREET DISTRICT, BOTANY

Schedule 5A: Terms of Footway Easements

1. Right of Access

1.1 Definitions

For the purpose of clause 1 of this Instrument, the following words have the following meanings:

Council means the Bayside Council and its successors.

Easement means the Easement created in accordance with clause 1 of this Instrument.

Lighting means all lighting within the Lot Burdened required by the Council from time to time in accordance with the Easement.

Lot Burdened means that part of the land having the burden of the Easement which the Plan indicates is the site of the Easement.

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time.

Plan means the plan to which this Instrument relates.

Signage means all safety signage within the Lot Burdened required by the Council from time to time in accordance with the Easement.

1.2 Terms of Easement

Full right for:

- (a) the public at all times to enter, pass and repass over the Lot Burdened by foot; and
- (b) the Council and the servants, agents and contractors of the Council at all times to enter, pass and repass over the Lot Burdened (in common with the public) with or without plant and equipment and to remain on the Lot Burdened for so long as may be necessary for the purpose of performing the Council's rights under clause 1.3(b) and the Council's obligations under clause 1.4(a).

1.3 (a) The Owner of the Lot Burdened must at all times at its expense:

- 1. keep the Lot Burdened fully lit 24 hours every day in accordance with the lighting standards specified by the Council from time to time as being appropriate for a public road which requires lighting;
- 2. keep the Lot Burdened (including Lighting all the Signage) in good repair and condition at all times;
- 3. keep the Lot Burdened clean and free from rubbish; and
- 4. promptly comply with all reasonable directions by the Council in relation to maintenance and repair of the Lighting and the Signage.

- (b) If the Owner of the Lot Burdened does not perform any obligation under clause 1.3(a), the Council may undertake the required work and recover the costs of all such work from the Owner of the Lot Burdened as a liquidated debt.

- 1.4 (a) The Council must at its expense, from time to time and at all times as soon as practicable and so far as reasonably necessary promptly make good and remedy any damage caused to the Lot Burdened arising from any exercise of the Council's rights under clauses 1.2 and 1.3(b).
- (b) If the Council does not rectify any damage under clause 1.4(a), then the Owner of the Lot Burdened may undertake the required work and recover the costs of all such work from the Council as a liquidated debt.
- (c) Notwithstanding clauses 1.4(a) and 1.4(b), the Council shall not be liable for any loss, destruction or damage to the Lighting or the Signage.

1.5 Release and Variation of Easement

- (a) The Council is solely empowered to release the Easement.
- (b) The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Schedule 5B: - Terms of Right of Carriageway over the New Street 1 Land

1. Right of Carriageway

1.1 Definitions

For the purpose of clause 1 of this Instrument, the following words have the following meanings:

Council means the Bayside Council and its successors.

Easement means the Easement created in accordance with clause 1 of this Instrument.

Lighting means all lighting within the Lot Burdened required by the Council from time to time in accordance with the Easement.

Lot Burdened means the entirety of the land having the burden of the Easement which the Plan indicates is the site of the Easement, being the entirety of 4 DP 1203451 (known as New Street 1 or Mahroot Street)

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time.

Plan means the plan to which this Instrument relates.

Signage means all safety signage within the Lot Burdened required by the Council from time to time in accordance with the Easement.

1.2 Terms of Easement

Full right, with respect to the entirety of the Lot Burdened, for:

- (a) the public to go, pass and repass at all times and for all purposes with or without animals or vehicles or both; and
- (b) the Council and the servants, agents and contractors of the Council at all times to enter, pass and repass over the Lot Burdened (in common with the public) with or without plant and equipment and to remain on the Lot Burdened.

1.3 (a) The Owner of the Lot Burdened must at all times, and at its expense (where relevant):

1. keep the Lot Burdened fully lit 24 hours every day in accordance with the lighting standards specified by the Council from time to time as being appropriate for a public road which requires lighting;
2. keep the Lot Burdened (including Lighting all the Signage) in good repair and condition at all times;
3. keep the Lot Burdened clean and free from rubbish;
4. promptly comply with all reasonable directions by the Council in relation to maintenance and repair of the Lighting and the Signage;
5. agree to the installation and maintenance by the Council of prescribed traffic control devices within the meaning of the *Road Transport Act 2013*, *Road*

Transport (General) Regulation 2013, and Road Rules 2014 (Road Legislation) on the Lot Burdened, and the regulation of traffic on the Lot Burdened by the Council or other public authorities or bodies in accordance with the Road Legislation;

6. effect and maintain a public liability insurance policy, in relation to the Burdened Land, for not less than twenty million dollars (\$20,000,000.00) for any one occurrence and unlimited as to the number of occurrences, in respect of liability following the loss of or damage to property and/or personal injury, disease, illness or death of persons, arising on or with respect to the Burdened Land, where:
 - (a) the said insurance policy must be effected with a reputable company agreed to by the Council in writing, with details of the company to be agreed to by the Council writing; and
 - (b) a certificate of currency in respect of the required insurance policy must be provided to the Council by the Owner within 7 days of a request by the for such certification.
7. indemnify the Council against all claims in respect of loss or damage to any property, plant or equipment belonging to, or personal injury to or the death of, any person occurring at, on or in relation to the Burdened Land;
8. maintain all utilities services located at or on the Burdened Land, including but not limited to water, sewer, electricity, gas, telephone and internet.

(b) Repair obligations under clause 1.3(a) do not apply to wear and tear, or wilful damage except to the extent that the damage is caused by the Owner of the Lot Burdened or any servant, agent or contractor of the Owner of the Burdened Lot.

(c) If the Owner of the Lot Burdened does not perform any obligation to carry out work under clause 1.3(a), the Council may undertake the required work and recover the costs of all such work from the Owner of the Lot Burdened as a liquidated debt.

- 1.4 (a) The Council must at its expense, from time to time and at all times as soon as practicable and so far as reasonably necessary promptly make good and remedy any damage caused to the Lot Burdened arising from any exercise of the Council's rights under clauses 1.2 and 1.3(c);
- (b) If the Council does not rectify any damage under clause 1.4(a), then the Owner of the Lot Burdened may undertake the required work and recover the costs of all such work from the Council as a liquidated debt.
- (c) Notwithstanding clauses 1.4(a) and 1.4(b), the Council shall not be liable for any loss, destruction or damage to the Lighting or the Signage.

1.5 Release and Variation of Easement

- (c) The Council is solely empowered to release the Easement.
- (c) The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Schedule 6: Consent Orders

Part 1 – Consent Orders in Supreme Court Proceedings 2017/ 00279795

UCPR 6.2

CONSENT ORDERS

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Real Property List
Registry	Sydney
Case number	2017/ 00279795

TITLE OF PROCEEDINGS

Plaintiff	BAYSIDE COUNCIL
Defendant	JKN AUSTRALIA PTY LTD ACN 151 283 635

FILING DETAILS

Filed for	Bayside Council , plaintiff
Legal representative	Robert Bruce Henry Schneider HWL Ebsworth Lawyers
Legal representative reference	PCN: 5735 NSW Ref: RBS:AIW:650268 Court User No: 1290
Contact name and telephone	Alexandra White Tel. +61 2 9334 8555
Contact email	aiwhite@hwle.com.au

Consent orders

By consent the Court makes the following declarations and orders:

1. An order for specific performance of clause 3.1 of the Deed (as otherwise modified by these Orders).
2. For the purpose of order 1, an order that the defendant without cost to the plaintiff:
 - (a) dedicate to the plaintiff as a public road the land which is now Lot 4 in Deposited Plan 1203451, being part of the land marked Lot 3 on the plan in schedule 1 to the Deed, within 7 days of the date of issue of any Occupation Certificate for any building within the development, as defined in the attached Voluntary Planning Agreement between the Plaintiff and the Defendant (**Development**) dated [ie. this Agreement].
(Dedication).
3. For the purpose of order 1, an order that the defendant apply for all approvals and otherwise do all things necessary to cause the Dedication to occur.
4. For the purpose of order 1, an order that the defendant:
 - (a) Prepare all necessary forms, plans and surveys,
 - (b) Cause any mortgage or other encumbrance to be discharged,
 - (c) Deliver to the office of Land and Property Information any relevant certificate of title, and
 - (d) Prepare or cause to be prepared any necessary plan of survey or proposed deposited plan (within the meaning of Division 3 of Part 23 of the Conveyancing Act 1919 (NSW),
to enable the Dedication to be registered or recorded at the office of Land and Property Information within 7 days of the date of issue of any Occupation Certificate for any building within the Development..
5. The defendant pay the plaintiffs' costs as agreed or assessed.

SIGNATURE

Signature of legal representative

Capacity

Solicitor

Date of signature

Signature of legal representative

Capacity

Solicitor

Date of signature

UCPR 6.2

CONSENT ORDERS

COURT DETAILS

Court	Land and Environment Court of New South Wales
Class	4
Case number	2016/324448

TITLE OF PROCEEDINGS

Applicant	BAYSIDE COUNCIL
First Respondent	TOPLACE PTY LTD (ACN 135 918 491)
Second Respondent	JKN AUSTRALIA PTY LTD (ACN 151 283 635)

FILING DETAILS

Filed for	Bayside Council , applicant
Legal representative	John Alexander Cole HWL Ebsworth Lawyers
Legal representative reference	PCN: 8662 Ref: JAC:620568
Contact name and telephone	John Cole / Philip Brown Tel. +61 2 9334 2506
Contact email	jcole@hwle.com.au / pbrown@hwle.com.au

Consent orders

By consent the Court makes the following orders

1. The Respondents, by themselves, their servants or agents, are to register in favour of the Council an easement for perpetual access rights by members of the public over Lot 4 DP 1203451, in the accordance with the terms specified in Item C3 of Schedule 3 and Schedule 5B of the attached Voluntary Planning Agreement between the Applicant and the Second Respondent dated [ie. this Agreement], within 28 days of the date of these orders.
2. The Respondents, by themselves, their servants or agents, are to dedicate Lot 4 DP 1203451 to the Applicant as a public road, or cause Lot 4 DP 1203451 to be dedicated to the Applicant as a public road, within 7 days of the date of issue of any Occupation Certificate for any building within the development, as defined in the attached Voluntary Planning Agreement between the Plaintiff and the Defendant (**Development**) dated [ie. this Agreement].
3. The Second Respondent, by itself, its servants or agents, must dedicate Lot 4 DP 1203451 to the Applicant as a public road in accordance with the Deed of Dedication of Land between the Second Respondent and the Applicant executed on or about 7 April 2014 within 7 days of the date of issue of any Occupation Certificate for any building within the Development.
4. The Respondents are to pay the Applicant's costs as agreed or assessed.

SIGNATURE

Signature of legal representative

Capacity

Solicitor

Date of signature

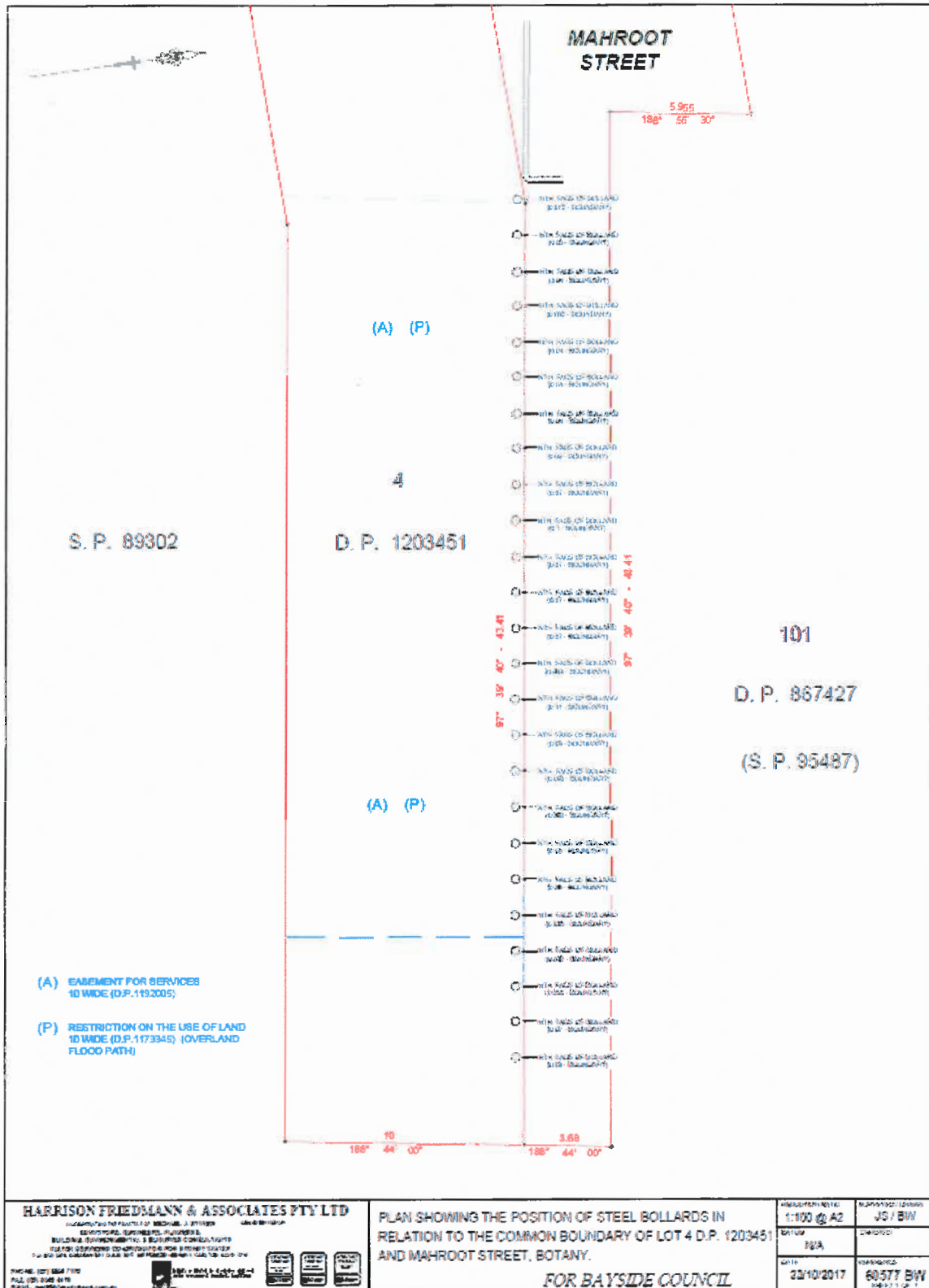
Signature of legal representative

Capacity

Solicitor

Date of signature

Schedule 7: Survey showing location of bollards



Schedule 8: Specifications

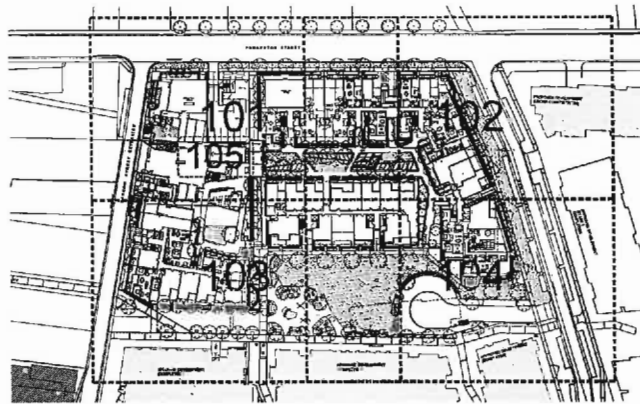
Park Grove West

Landscape Development Application

Pemberton Street, Botany, NSW

DRAWINGS

DWG NO.	DRAWING TITLE	SCALE
000	COVER SHEET	1:1000
001	LANDSCAPE MASTERPLAN	1:250
101	LANDSCAPE PLAN - SOUTH WEST	1:150
102	LANDSCAPE PLAN - NORTH WEST	1:150
103	LANDSCAPE PLAN - SOUTH EAST	1:150
104	LANDSCAPE PLAN - NORTH EAST	1:150
105	LANDSCAPE PLAN - LEVEL 2 & LEVEL 3	1:100
106	LANDSCAPE PLAN - NATURE PLAYGROUND	1:100
401	PLANTING PLAN - SOUTH WEST	1:150
402	PLANTING PLAN - NORTH WEST	1:150
403	PLANTING PLAN - SOUTH EAST	1:150
404	PLANTING PLAN - NORTH EAST	1:150
405	PLANTING PLAN - LEVEL 2 & LEVEL 3	1:100
501	LANDSCAPE DETAILS	As Shown
502	LANDSCAPE DETAILS, SPECIFICATIONS & PLANT SCHEDULE	As Shown



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The contractor is to check and verify all work on site. Drawing work by others is to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions and notes shall be referred to the Landscape Architect for confirmation.

Issue	Revision Description	Date	Check	Date
G	Drainage/Lighting Adjustment	PH	RS	02.08.2017
F	Issue for Approval	PH	RS	20.07.2017
E	Issue for Approval	PH	RS	17.02.2017
D	Issue for SCA Confirmation	NH	RS	25.10.2016
C	For Review	NH	RS	25.10.2016
B	Issue for SCA Confirmation	PH	RS	27.05.2016
A	Conceptual Finalisation	CV	RS	27.08.2015

LEGEND

Key Plan

SITE IMAGE CHART
Toplace



Level 1, 5-6 Bagley Street
Pemberton NSW 2016
Australia
Tel: (01 21) 6322 2900
Fax: (01 21) 9986 2877
www.siteimage.com.au

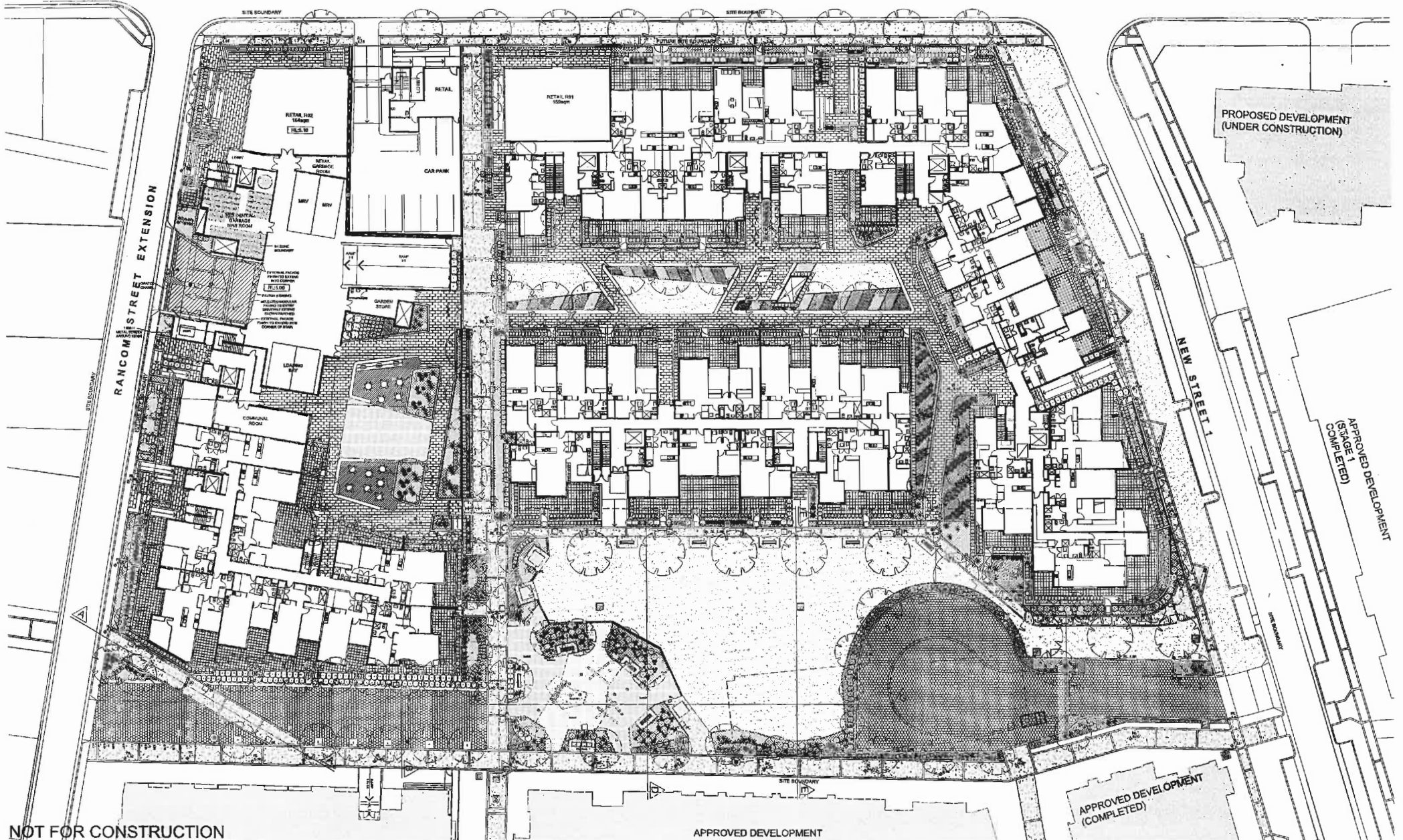
Project:
Park Grove West
Pemberton Street
Botany, NSW, 2019

Drawing Name:
Cover Sheet

Issue:
Job Number:
SS14-2774

FOR APPROVAL.

Drawing Number:
000 G



NOT FOR CONSTRUCTION

APPROVED DEVELOPMENT

APPROVED DEVELOPMENT (COMPLETED)

PROPOSED DEVELOPMENT (UNDER CONSTRUCTION)

APPROVED DEVELOPMENT (STAGE 1 COMPLETED)

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The contractor shall check and verify all work on site (including work by others) before commencing any landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not waste this drawing. Any required variations and claims shall be referred to the Landscape Architect for confirmation.

Issue	Revision Description
G	Drainage/Lighting Adjustment
F	Issue for Approval
E	Issue for Approval
D	Issue for 35% Confirmation
C	For Review
B	Issue for 35% Confirmation
A	Development Application
Issue	Revision Description

Drawn	Check	Date
PH	RS	08.08.2017
PH	RS	20.07.2017
NP	RS	17.02.2017
NH	RS	26.10.2016
MR	RS	20.10.2016
PL	RS	22.02.2016
CV	RS	27.06.2015

Symbol	Description
Tree Planting (large/small)	Tree Planting (large/small)
Tree Planting (medium)	Tree Planting (medium)
Large & Small Street Planting	Large & Small Street Planting
Acacia Planting	Acacia Planting
Mean Planting & Groundcover	Mean Planting & Groundcover
Turf	Turf
Paving Type 1	Paving Type 1
Paving Type 2	Paving Type 2
Paving Type 3	Paving Type 3
Paving Type 4	Paving Type 4
Timber Deck	Timber Deck
Stone Deck	Stone Deck
Rebar Deck	Rebar Deck
Grading Banks	Grading Banks
Proposed Ballast	Proposed Ballast
Grading Banks (with timber)	Grading Banks (with timber)
Square Paving Sealing	Square Paving Sealing
Feature Sp/ulpture	Feature Sp/ulpture
Hosecock	Hosecock
Irrigation controller	Irrigation controller
H/W Timber Edge	H/W Timber Edge
Fire Light	Fire Light
Radio Lighting	Radio Lighting
Engineer's table	Engineer's table

Key Plan:



SITE IMAGE

Client: Toplace

Project: Park Grove West, Pemberton Street, Botany, NSW, 2019

Scale: 1:250 @ A1

Job Number: SS14-2774

Date: 01/12/2017

www.siteimage.com.au

FOR APPROVAL

Drawing Name: Landscape Masterplan

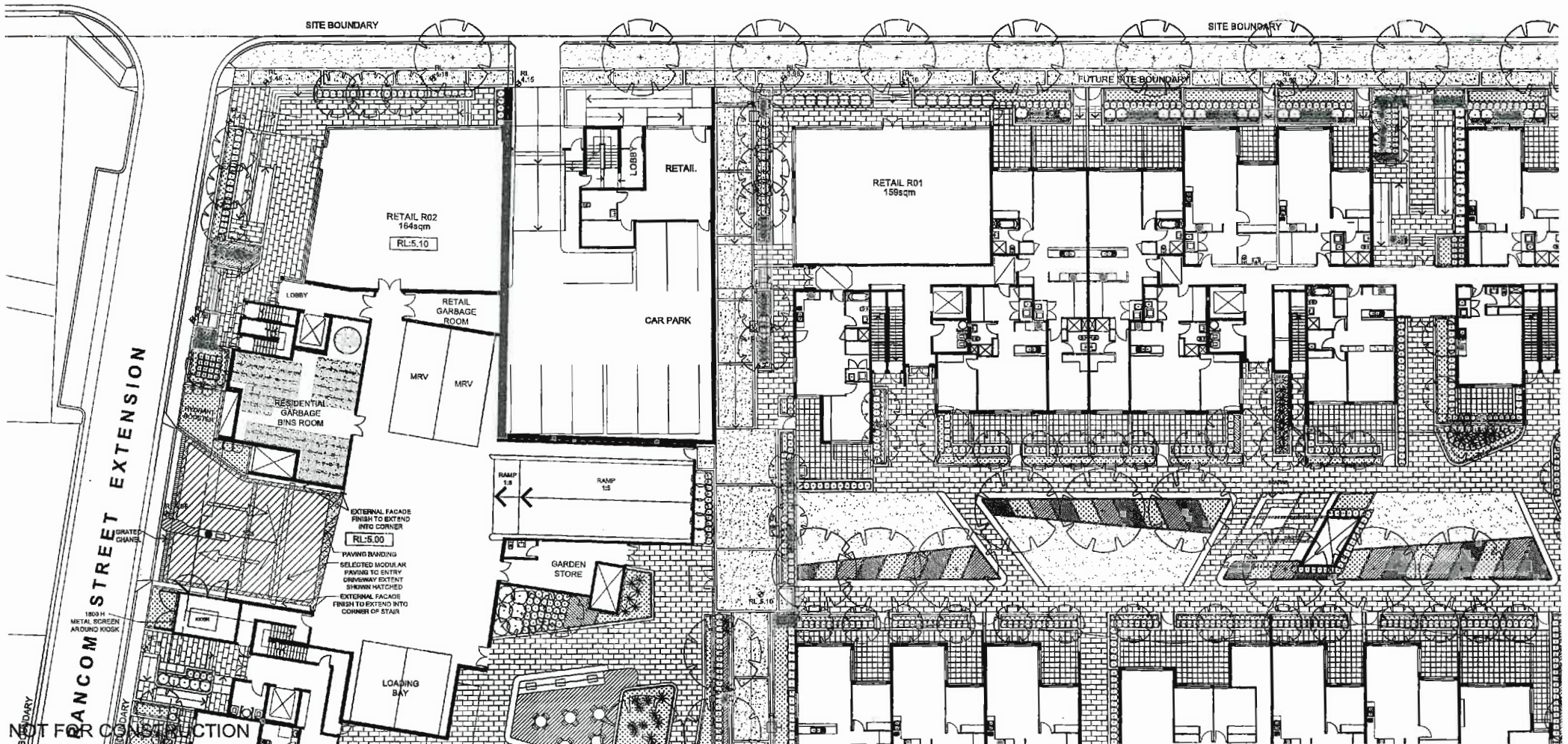
Scale: 1:250 @ A1

Job Number: SS14-2774

Date: 01/12/2017

Sheet: 001 G

PEMBERTON STREET



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The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager or Landscape Architect prior to commencing work. Do not scale this drawing. Any required dimensions not shown shall be referred to the Landscape Architect for confirmation.

Item	Revision Description	Date	Checked	Drawn
G	Drainage/Lighting Adjustment	PH	RS	02.08.2017
F	Issue for Approval	PH	RS	20.07.2017
E	Issue for Approval	MP	RS	17.05.2017
D	Issue for S34 Conference	NH	RS	26.10.2016
C	For Review	NH	RS	20.10.2016
B	Issue for S24 Conference	PH	RS	07.05.2016
A	Development Application	CV	RS	27.08.2015

Symbol	Description
(Tree)	Tree Planting
(Grass)	Grass Planting
(Large & Small Herb)	Large & Small Herb Planting
(Plant)	Planting
(Gravel)	Gravel
(Paving)	Paving
(Timber Deck)	Timber Deck
(Blue Brick)	Blue Brick
(Red Brick)	Red Brick
(Ramp)	Ramp
(Stair)	Stair
(Feature Sculpture)	Feature Sculpture
(H/W Timber Edge)	H/W Timber Edge
(Pole Light)	Pole Light
(Fence)	Fence

Symbol	Description
(Timber Deck)	Timber Deck
(Blue Brick)	Blue Brick
(Red Brick)	Red Brick
(Ramp)	Ramp
(Stair)	Stair
(Feature Sculpture)	Feature Sculpture
(H/W Timber Edge)	H/W Timber Edge
(Pole Light)	Pole Light
(Fence)	Fence

Symbol	Description
(Timber Deck)	Timber Deck
(Blue Brick)	Blue Brick
(Red Brick)	Red Brick
(Ramp)	Ramp
(Stair)	Stair
(Feature Sculpture)	Feature Sculpture
(H/W Timber Edge)	H/W Timber Edge
(Pole Light)	Pole Light
(Fence)	Fence

Symbol	Description
(Timber Deck)	Timber Deck
(Blue Brick)	Blue Brick
(Red Brick)	Red Brick
(Ramp)	Ramp
(Stair)	Stair
(Feature Sculpture)	Feature Sculpture
(H/W Timber Edge)	H/W Timber Edge
(Pole Light)	Pole Light
(Fence)	Fence

Key Plan



SITE IMAGE

Client: **Toplace**

Project: **Park Grove West**
Pemberton Street
Botany, NSW, 2019

Scale: 1:150 @ A1

Job Number: **SS14-2774**

Drawing Number: **101 G**

FOR APPROVAL

Client: **Toplace**

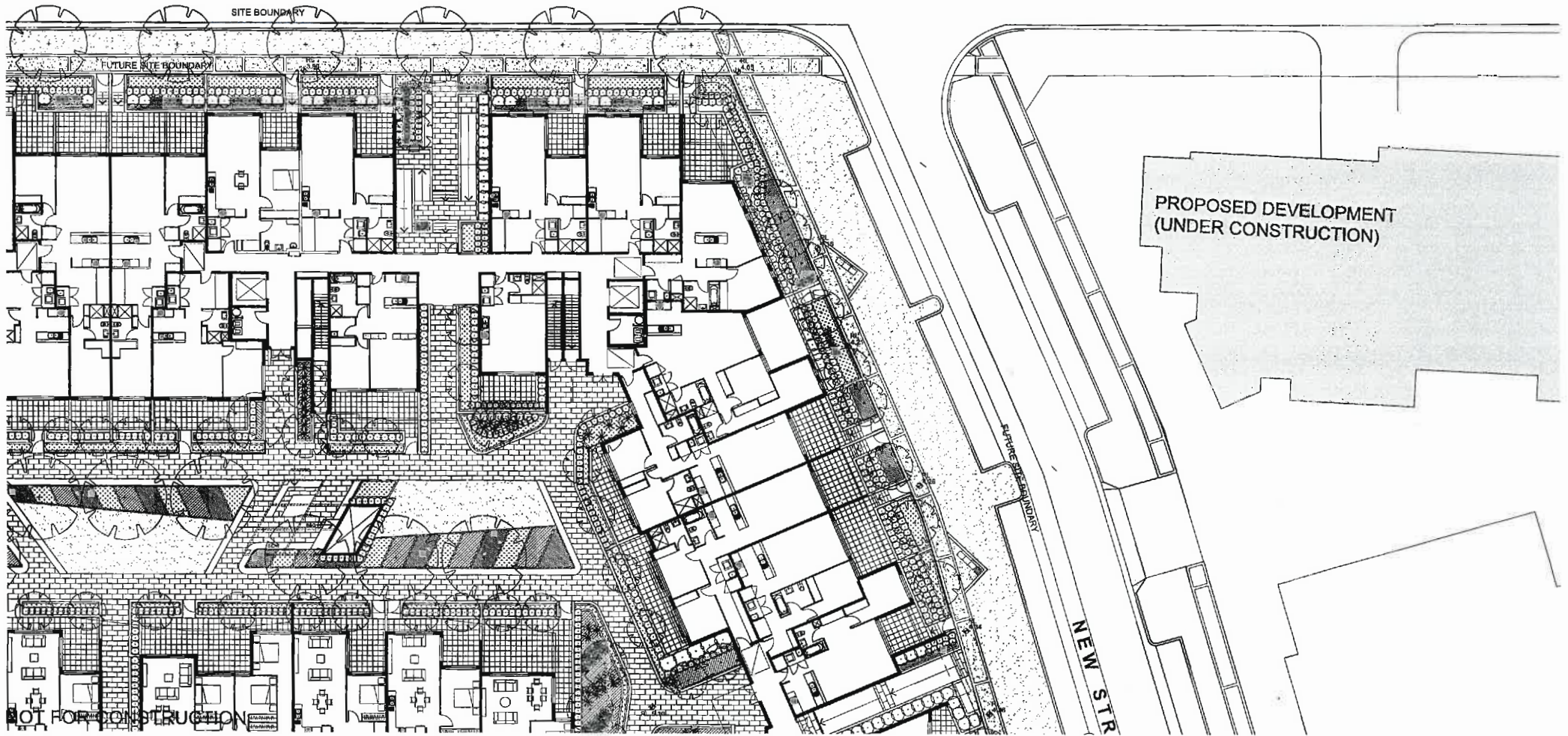
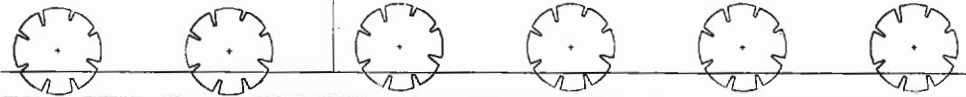
Project: **Park Grove West**
Pemberton Street
Botany, NSW, 2019

Scale: 1:150 @ A1

Job Number: **SS14-2774**

Drawing Number: **101 G**

FOR APPROVAL



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D	Design & Lighting Approval
F	Issue for Approval
D	Issue for Approval
E	Issue for SGA Confirmation
C	For Review
B	Issue for SGA Confirmation
A	Development Application
Rev	Revision Description

PH	RS	02.06.2017	
PH	RS	20.07.2017	
HP	RS	17.08.2017	
HR	RS	16.10.2016	
HR	RS	26.10.2016	
PH	RS	27.06.2016	
CV	RS	27.06.2016	
Drawn	Check	Date	

LEGEND

Tree Planting Large specimen plants, (not just school)	H/W Timber Deck	Square 'Pallet Seeding'
Fine Planting Development specimen at planting, (not just school)	Paving Type 1 Concrete (stone or gravel) with timber (not just school)	Feature Sculptures
Large & Small Strub Planting (not just school)	Rubble RB	Horseshoe Irrigation
Accent Planting (not just school)	EB Existing Bedding	Irrigation Controller
Mass Planting & Groundcovers (not just school)	PB Proposed Bedding	H/W Timber Edge
	Paving Type 2 Gravel	Flow Light - Refer Lighting Engineer's plan
	Paving Type 3 Sand Paving	
	Paving Type 4 Gravel Bedding	
	Paving Type 5 Large tile set in concrete (not just school)	

Key Plan:

SITE IMAGE



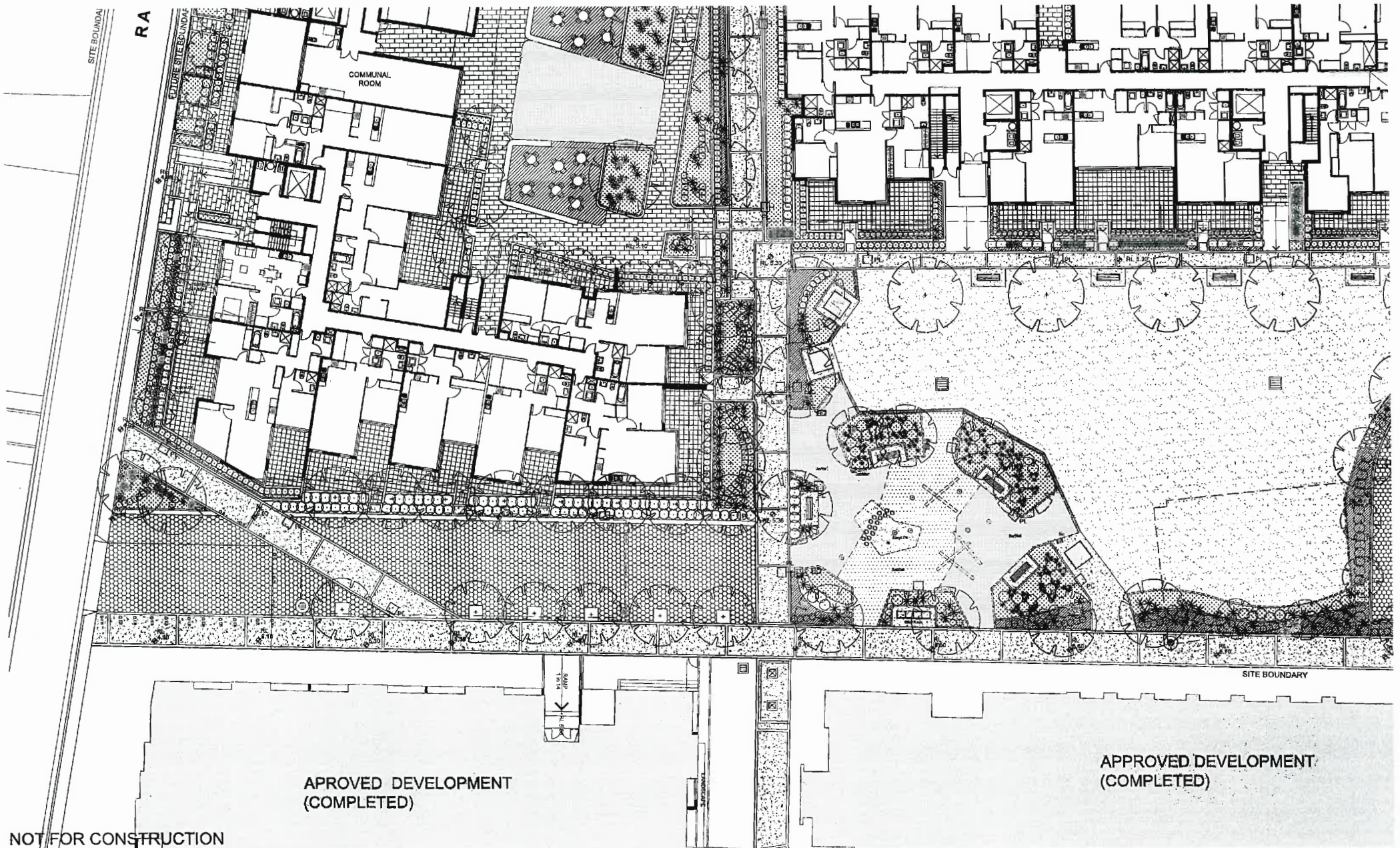
Client: **Toplace**
Project: **Park Grove West Pemberton Street Botany, NSW, 2019**

Drawing Name: **Landscape Plan - North West**

Scale: **1:150 @ A1**
Job Number: **SS14-2774**
Drawing Number: **102 G**

FOR APPROVAL





APPROVED DEVELOPMENT
(COMPLETED)

APPROVED DEVELOPMENT
(COMPLETED)

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B	Design/Lighting Agreement
P	Issue for Approval
D	Issue for Approval
C	Issue for J2M Conference
F	For Review
E	Issue for J2M Conference
A	Development Application
Issue	Re-Ashen Description

PH	RS	02.08.2017
PH	RS	20.07.2017
NP	RS	17.05.2017
NS	RS	28.12.2016
NS	RS	20.10.2016
PH	RS	27.08.2016
CV	RS	27.08.2016
Drawn	Check	Date

LEGEND

Tree Planting Large specimen of plant (see plant schedule)	Turf	Timber Deck	Square 'Pallet Seating'
Town Planting Medium and small specimen of plants (see plant schedule)	Paving Type 1 Ultra-thin (Decorated) Paved Area (Paving with decorative aggregate 10)	Bike Rack	Feature Sculptures
Large & Small Shrub Planting (see plant schedule)	Paving Type 2 Use Pavers	Rubbish Bin	Horseshoe
Accent Planting Independent shrubs	Paving Type 3 Gravel Paving	Existing Balustrade	Irrigation Controller
Mass Planting & Groundcover (see plant schedule)	Paving Type 4 Concrete	Proposed Balustrade	H/W Timber Edge
	Paving Type 5 Gravel Paving	Pole Light Pole Light Engineer's detail	

Key Plan



SITE IMAGE



Client
Toplace

Project
Park Grove West
Pemberton Street
Botany, NSW, 2019

Drawing Name:
Landscape Plan - South East

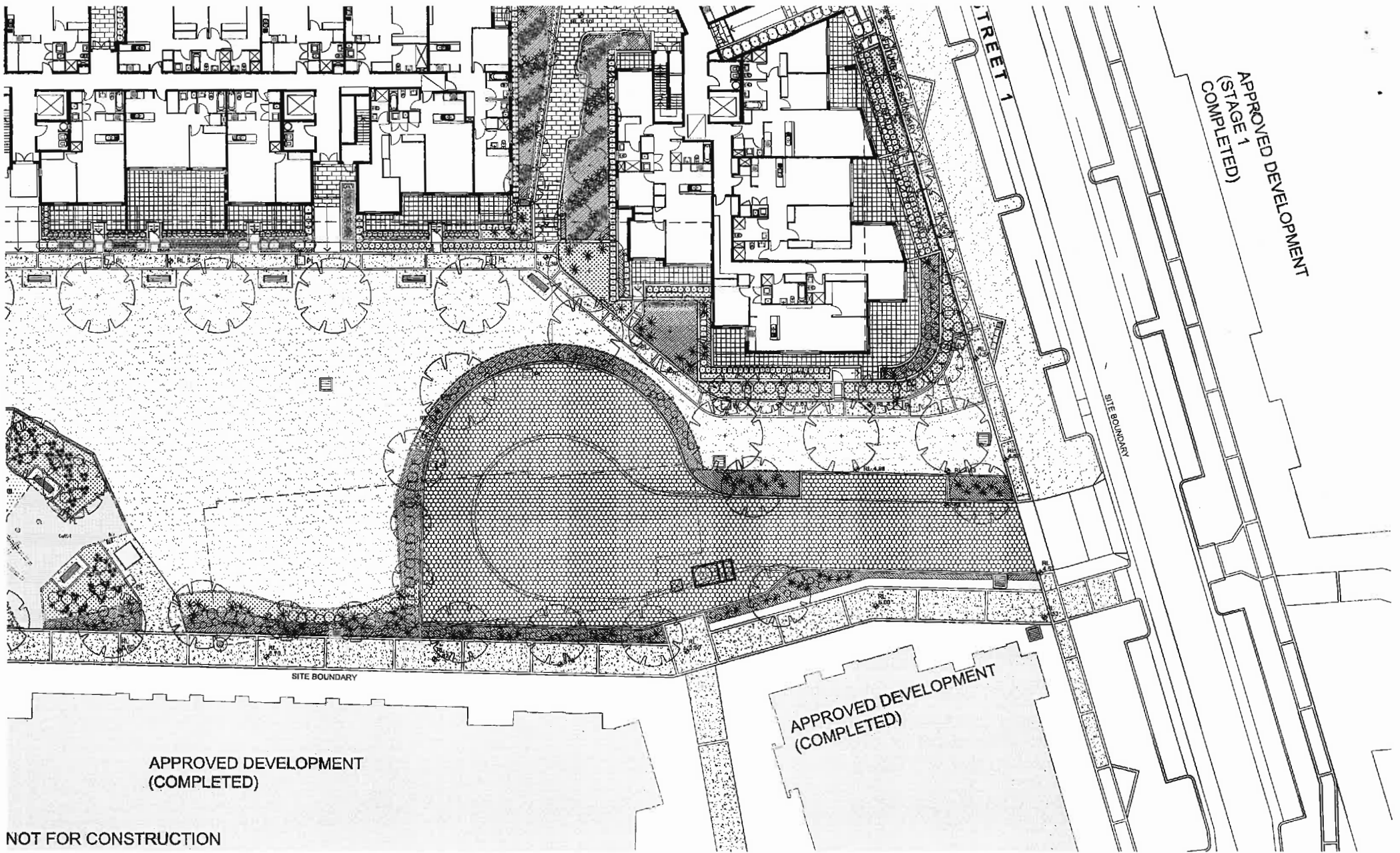
Scale: 1:150 @ A1

SS14-2774

FOR APPROVAL

Drawing Number:

103 G



APPROVED DEVELOPMENT
(COMPLETED)

APPROVED DEVELOPMENT
(COMPLETED)

APPROVED DEVELOPMENT
(STAGE 1
COMPLETED)

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Issue	Revision Description	Drawn	Check	Date
B	Drainage/Lighting Adjustment	PH	RS	02.05.2017
F	Issue for Approval	PH	RS	20.07.2017
G	Issue for Approval	NP	RS	17.02.2017
D	Issue for 20% Compliance	NSH	RS	26.12.2018
C	For Review	NSH	RS	20.12.2018
A	Issue for 65% Compliance	PH	RS	27.05.2019
A	Development Application	CV	RS	27.05.2019

Issue	Revision Description	Drawn	Check	Date
PH	RS	02.05.2017		
PH	RS	20.07.2017		
NP	RS	17.02.2017		
NSH	RS	26.12.2018		
NSH	RS	20.12.2018		
PH	RS	27.05.2019		
CV	RS	27.05.2019		

LEGEND		Turf Deck		Square Pallet Roofing	
	Tree Planting (Large specimen or mature)		Turf Deck		Square Pallet Roofing
	Planting (Medium specimen or mature)		Paving Type 1 (Large format paving)		Feature Sculptures
	Planting (Small specimen or mature)		Paving Type 2 (Medium format paving)		Feature Sculptures
	Planting (Very Small specimen or mature)		Paving Type 3 (Small format paving)		Feature Sculptures
	Planting (New plant or seedling)		Paving Type 4 (Grass pavers)		Feature Sculptures
	Planting (New plant or seedling)		Paving Type 5 (Impervious concrete pavers with stone inserts with recessed pattern, laid to give 2mm fall)		Feature Sculptures
	Planting (New plant or seedling)		Paving Type 6 (Grass pavers)		Feature Sculptures
	Planting (New plant or seedling)		Paving Type 7 (Grass pavers)		Feature Sculptures

Key Plan:



SITE IMAGE
Landscape Architects
Level 1, 3rd Street West
Botany NSW 2019
Australia
Ph: 61 2 9335 5000
Fax: 61 2 9335 5077
www.siteimage.com.au

Client:
Toplace

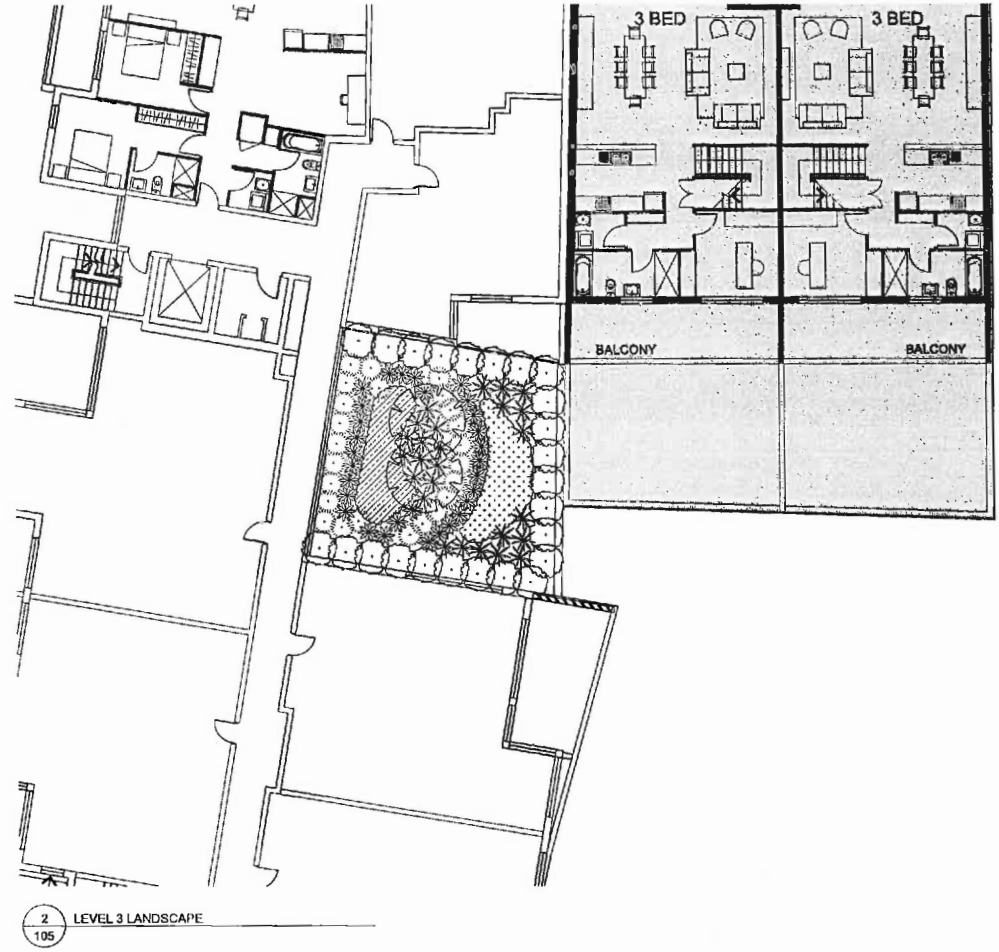
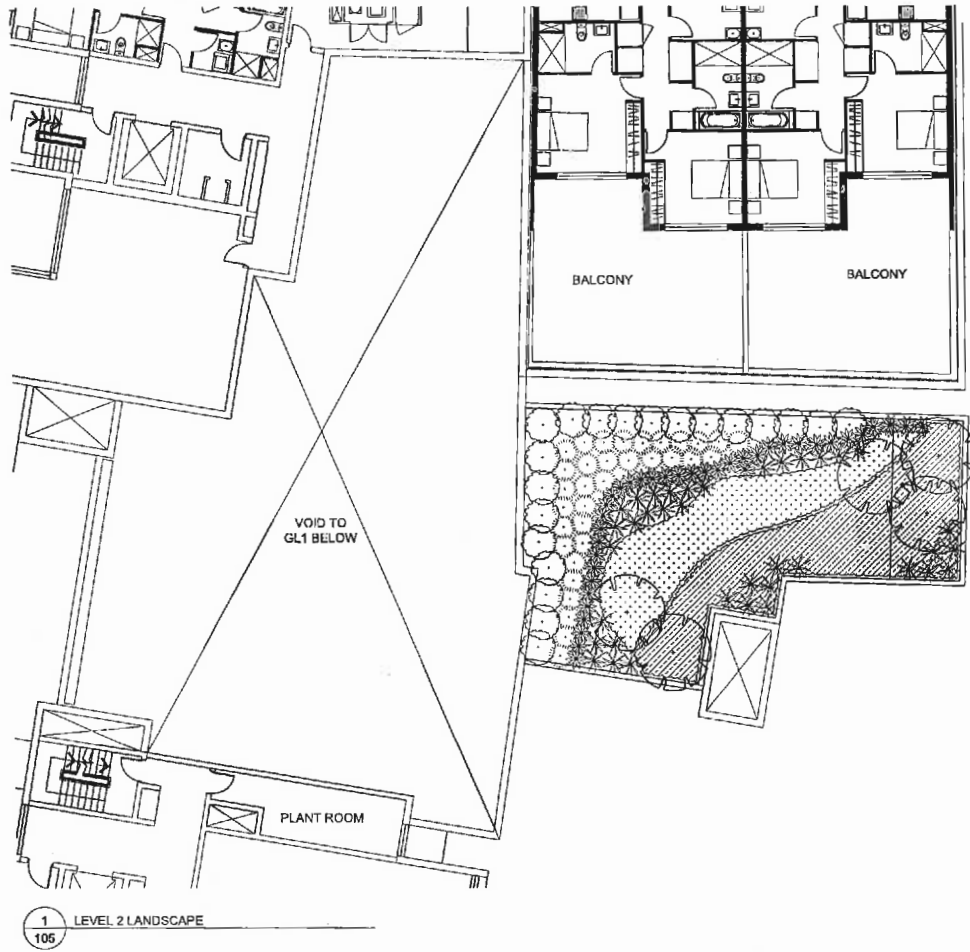
Project:
Park Grove West
Pemberton Street
Botany, NSW, 2019

Drawing Name:
Landscape Plan - North East

Scale: 1:150 @ A1
Job Number:
SS14-2774

FOR APPROVAL

Drawing Number:
104 G



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Issue	Revision Description	PH	RS	Date
A	Challenge/Lighting Adjustment	PH	RS	02.08.2017
F	Date for Approval	PH	RS	30.07.2017
E	Date for Approval	PH	RS	17.05.2017
D	Issue for 304 Conference	PH	RS	28.10.2016
C	For Review	PH	RS	30.10.2016
B	Issue for 304 Conference	PH	RS	27.08.2016
A	Development Application	CV	RS	27.08.2016

LEGEND

Tree Planting Large numbers of planting Small numbers of planting	Turf	Timber Deck	Square 'Patio' Seating
Time Planting Medium numbers of planting Small numbers of planting	Paving Type 1 Unpaved driveway/paved border paving with timber edging and	Timber Deck	Feature Sculpture
Large & Small Shrub Planting Paved area around	Paving Type 2	Rubicon Bin	Hosacook irrigation controller
Assist Planting Paved area around	Paving Type 3 Soft Paving	Edging Bolts	H/W Timber Edge
Main Planting & Constructive Paved area around	Paving Type 4 Concrete	Proposed Borders	Pole Light - Timber Lighting Engineers & Civil

Key Plan:



CLIENT
Toplace

PROJECT
Park Grove West
Pemberton Street
Botany, NSW, 2019

Drawing Name:
Landscape Plan - Level 2 & Level 3

Scale: 1:100 @ A1

Job Number: SS14-2774

Sheet of: 105 G

FOR APPROVAL.

SCOPE OF WORKS

- Landscape works and Nature Playground works

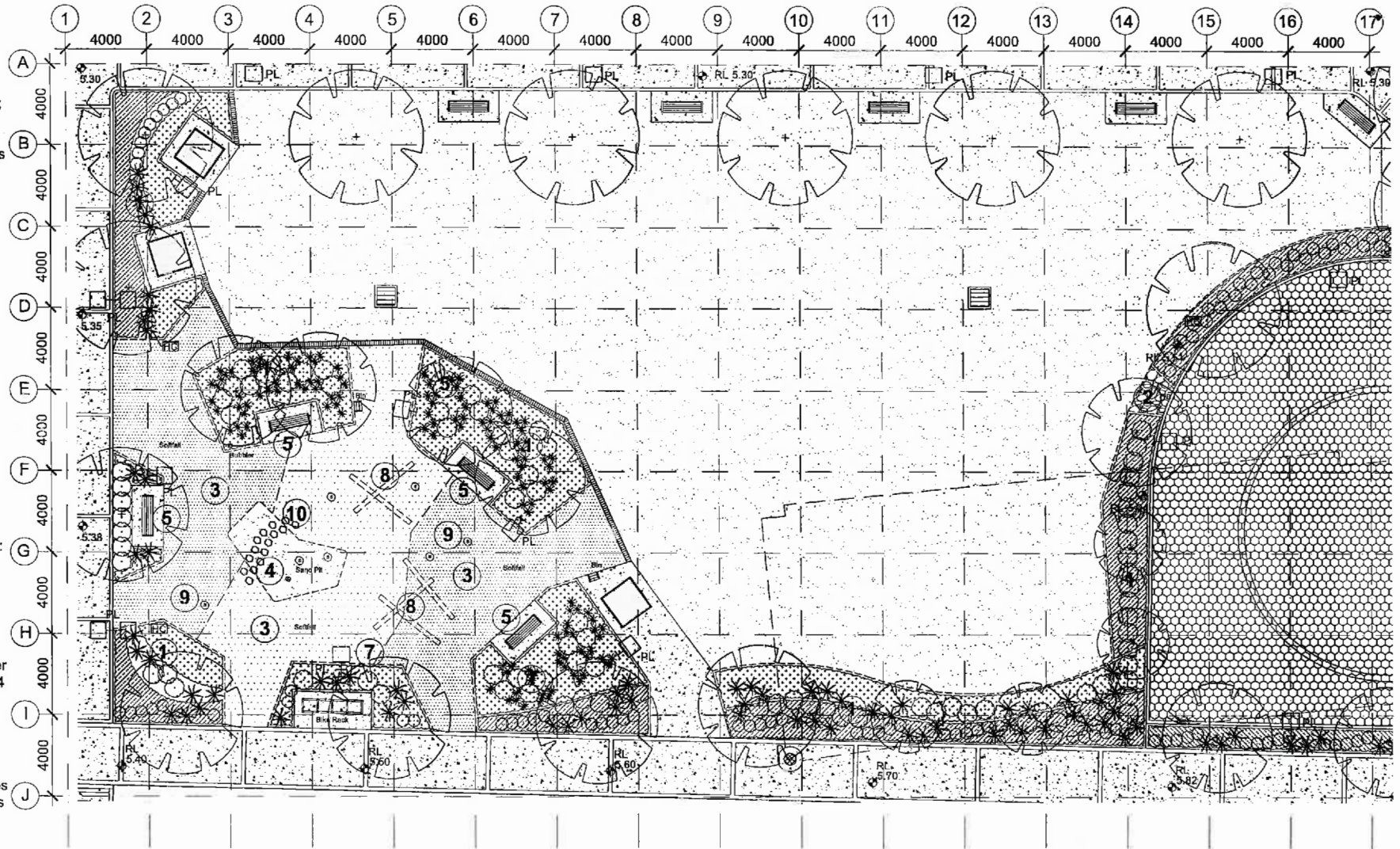
Landscape works by the landscape contractor are to include:

1. General garden surrounds, with trees, shrubs and accent plants, groundcovers, mulch and irrigation;
2. Informal, open joint sandstone access paths, with all border stones in full mortar bed;
3. Colour sofffall area with minor mounding, cert to AS 4422;
4. Sandpit formed by downturn of adjacent sofffall, with suitable drainage
5. 4 x benches set with back & arms, stainless steel finish, into adjoining gardens.
6. Footings and integrating stirrup fixings / brackets as required for artwork elements below
7. Lighting and drainage will be by other trades, with landscape works to coordinated with these works, to AS-P3 Standard.

Nature Playground works are to include:

8. 5 horizontal / stacked log play elements, with thematic carving / treatment
9. 8 x sculptural elements or similar, marked with an 'S', being ie 4 larger (200mm diam x say 3m high) and 4 smaller (150 mm diam x say 2m high), refer to 'S' on plans referring to sculptural elements & details.
10. 15 x selected / carved segments of timber 'trunks' as stepping stones set into adjacent sofffall and across sandpit as shown.
11. Flush Brick edge and H/W edges to gardens & sofffall/ paths.

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D	Entirety/Lighting Approval	PH	RS	02.08.2017
F	Issue for Approval	PHL	RS	26.07.2017
B	Issue for Approval	NP	RS	17.01.2017
C	Issue for S24 Certificate	NH	RS	28.10.2016
D	For Review	NH	RS	20.10.2016
B	Issue for S24 Certificate	PJ	RS	27.05.2016
A	Development Application	CV	RS	27.05.2015
Issue	Final/Issue Description	Drawn	Check	Date

LEGEND

	Tree Planting (see schedule of planting, for tree details)		Turf
	Tree Planting (see schedule of planting, for tree details)		Paving Type 1 (see schedule of paving, for paving details)
	Tree Planting (see schedule of planting, for tree details)		Paving Type 2 (see schedule of paving, for paving details)
	Tree Planting (see schedule of planting, for tree details)		Paving Type 3 (see schedule of paving, for paving details)
	Tree Planting (see schedule of planting, for tree details)		Paving Type 4 (see schedule of paving, for paving details)
	Tree Planting (see schedule of planting, for tree details)		Brick Rack
	Tree Planting (see schedule of planting, for tree details)		Rabbit Bin
	Tree Planting (see schedule of planting, for tree details)		Existing Bulb
	Tree Planting (see schedule of planting, for tree details)		Proposed Bulb
	Tree Planting (see schedule of planting, for tree details)		Timber Deck
	Tree Planting (see schedule of planting, for tree details)		Square 'Pallet' Smelting
	Tree Planting (see schedule of planting, for tree details)		Feature Sculpture
	Tree Planting (see schedule of planting, for tree details)		Horseshoe
	Tree Planting (see schedule of planting, for tree details)		Longitudinal controller
	Tree Planting (see schedule of planting, for tree details)		H/W Timber Edges
	Tree Planting (see schedule of planting, for tree details)		Pink Light
	Tree Planting (see schedule of planting, for tree details)		Refer Lighting (Engineer's Detail)

Key Plan

SITE IMAGE

Client: **Toplace**

Project: **Park Grove West**
Pemberton Street
Botany, NSW, 2019

Scale: 1:100 @ A1

Job Number: **SS14-2774**

Sheet: **106 G**

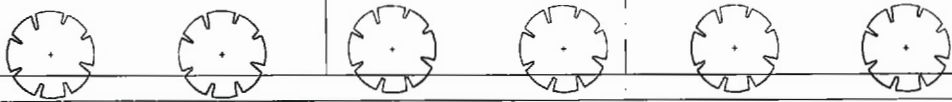
Drawing Name: **Landscape Plan - Nature Playground**

FOR APPROVAL

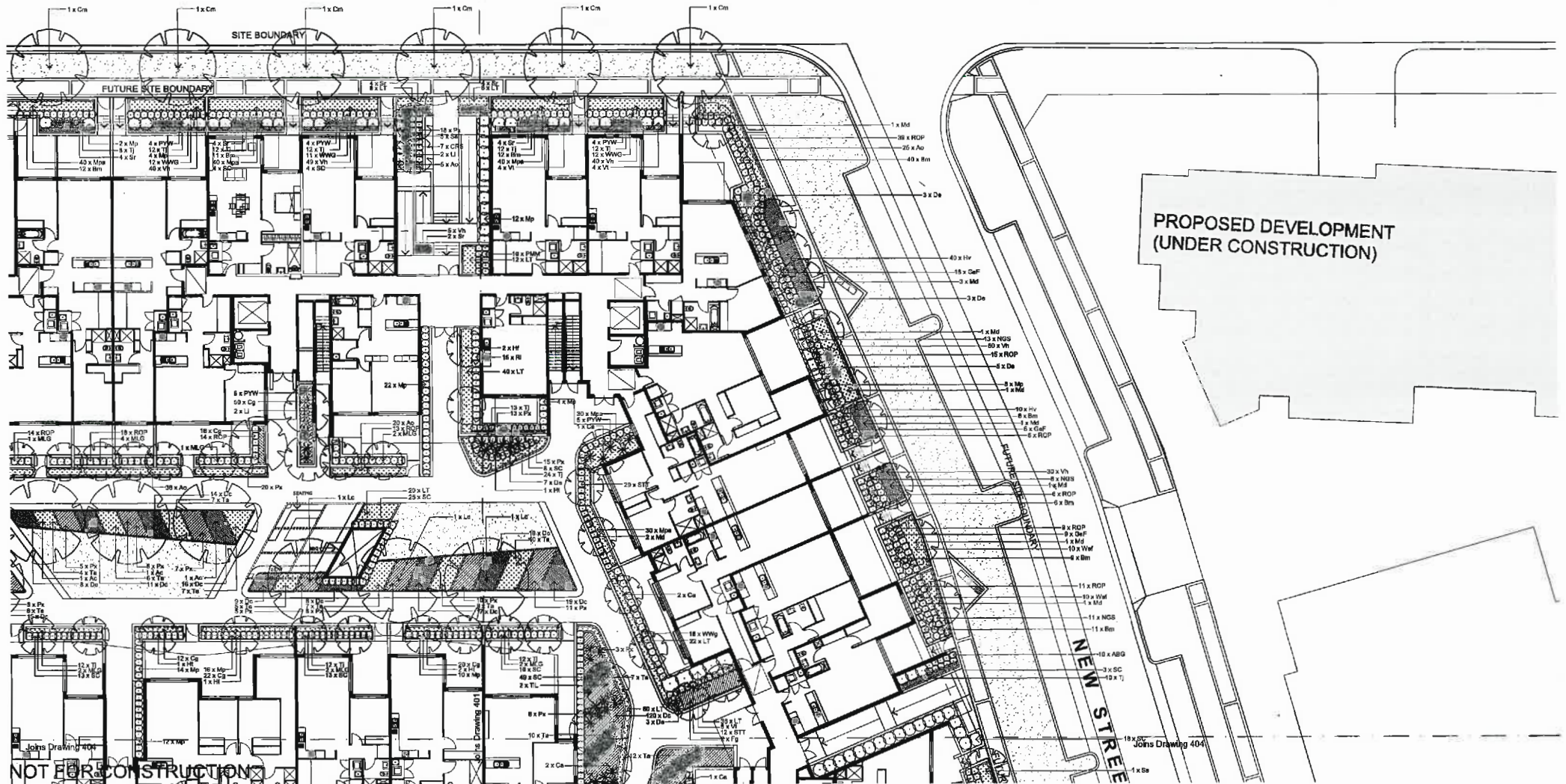
Scale: 1:100 @ A1

Job Number: **SS14-2774**

Sheet: **106 G**



Joins Drawing 401



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Issue	Revision Description
G	Changed lighting Adjustment
F	Issue for Approval
E	Issue for Approval
D	Issue for 324 Conference
C	For Review
B	Issue for 324 Conference
A	Development Application

Drawn	Checked	Date
PH	RS	02.06.2017
PH	RS	20.07.2017
NF	RS	07.22.2017
NH	RS	24.10.2018
NH	RS	20.10.2018
PH	RS	07.04.2018
CV	RS	27.04.2018

Symbol	Description
Tree Planting	Tree Planting (see plant schedule)
Large & Small Strata Planting	Large & Small Strata Planting (see plant schedule)
Acacia Planting	Acacia Planting (see plant schedule)
Mean Planting & Circumferences	Mean Planting & Circumferences (see plant schedule)
Turf	Turf
Paving Type 1	Paving Type 1 (see plant schedule)
Paving Type 2	Paving Type 2 (see plant schedule)
Paving Type 3	Paving Type 3 (see plant schedule)
Paving Type 4	Paving Type 4 (see plant schedule)
Timber Deck	Timber Deck
Squares 'Pallet Seating'	Squares 'Pallet Seating'
Site Blank	Site Blank
Retain fill	Retain fill
Existing Substrate	Existing Substrate
Proposed Boltons	Proposed Boltons
Feature Sculptures	Feature Sculptures
Homecock	Homecock
Irrigation controller	Irrigation controller
H / W Timber Edge	H / W Timber Edge
Pole Light	Pole Light
Reflex Lighting	Reflex Lighting
Engineer's detail	Engineer's detail

Key Plan:



SITE IMAGE



Client:
Toplace

Project:
Park Grove West
Pemberton Street
Botany, NSW, 2019

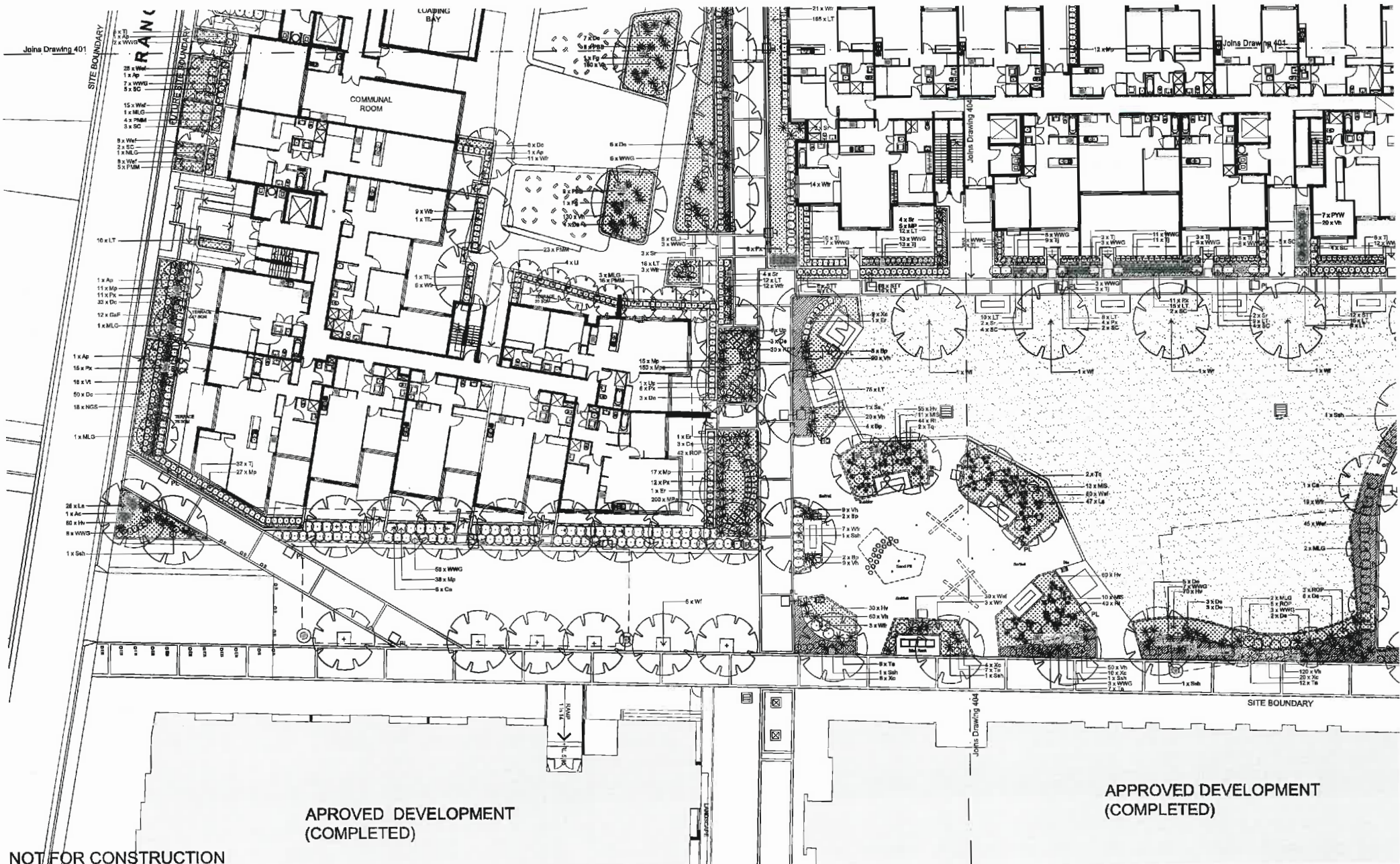
Drawing Name:
Landscape Planting Plan
North West

Scale: 1:150 @ A1
Job Number: SS14-2774

FOR APPROVAL

Sheet 1 of 1

402 G



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Issue	Revision Description	Drawn	Check	Date
G	Drainage/Lighting Adjustment	PH	RB	02.08.2017
F	Issue for Approval	PH	RB	30.07.2017
E	Issue for Approval	PH	RB	17.02.2017
D	Issue for S24 Conference	PH	RB	06.10.2016
C	For Review	PH	RB	05.10.2016
B	Issue for S24 Conference	PH	RB	27.05.2016
A	Development Application	CV	HS	27.08.2015

LEGEND

- Tree Planting (Large specimen or shading, see plant schedule)
- Tree Planting (Medium/Large specimen of shrubbery, see plant schedule)
- Large & Small Strub Planting (see plant schedule)
- Accent Planting (see plant schedule)
- Mass Planting & Groundcover (see plant schedule)
- Turf
- Paving Type 1 (Decorative Gravel/Stone, see paving schedule)
- Paving Type 2 (see paving schedule)
- Paving Type 3 (see paving schedule)
- Paving Type 4 (see paving schedule)
- Timber Deck
- Site Floor
- Subsidiary Walls
- Proposed Ballnets
- Paving Type 5 (Turf to be replaced by grass lawn with chain saw, see paving schedule)
- Square 'Pallet Seating'
- Feature Sculptures
- Hosehook Irrigation controller
- H/W Timber Edge
- Pole Light - (see lighting Engineer's detail)



Client: **Toplace**

Project: **Park Grove West Pemberton Street Botany, NSW, 2019**

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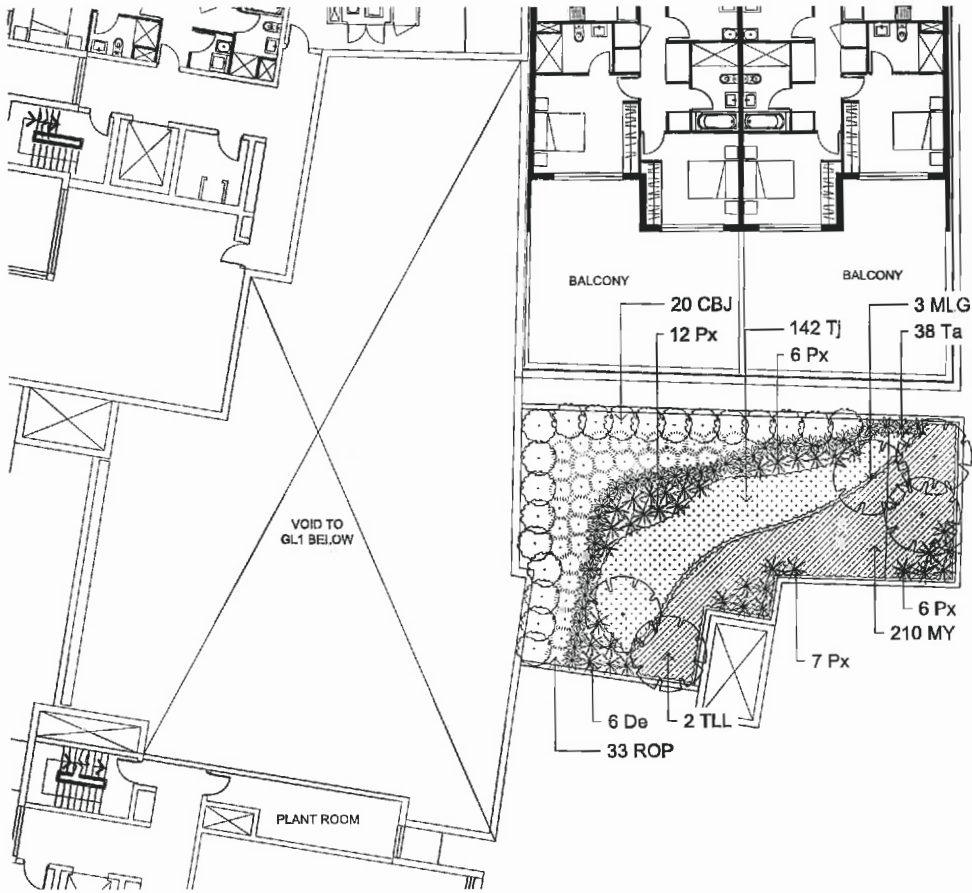
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Scale: **1:150 @ A1**

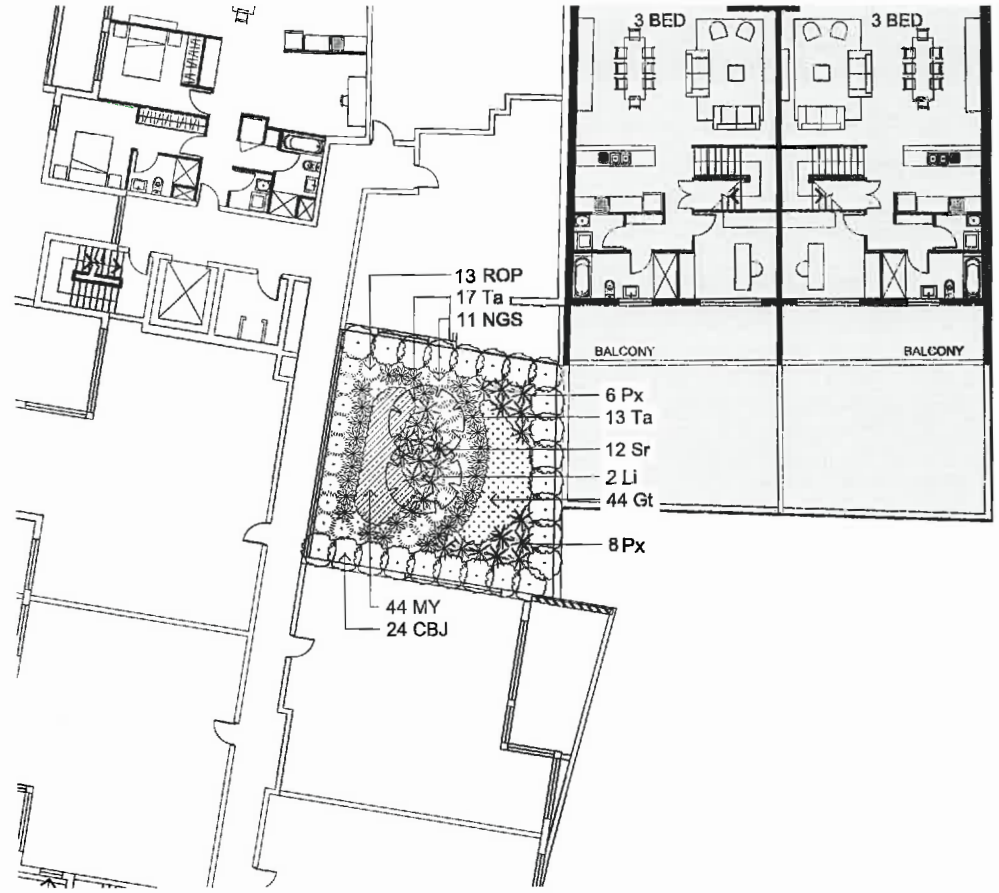
Job Number: **SS14-2774**

Drawing Number: **403 G**

FOR APPROVAL



1 LEVEL 2 LANDSCAPE
405



2 LEVEL 3 LANDSCAPE
405

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- D Drawings/Lighting Appointment
- F Issue for Approval
- E Issue for Approval
- D Issue for S24 Conference
- C For Review
- B Issue for S24 Conference
- A Development Application
- Issue Revision Description

PH	RS	02.08.2017
PH	RS	30.07.2017
JAF	RS	17.02.2017
NH	RS	26.10.2016
NH	RS	20.10.2016
PH	RS	27.05.2016
CV	RS	27.05.2015
Drawn	Check	Date

LEGEND

Tree Planting Range shown on plan (see notes for details)	Turf	Timber Deck	Square 'Pallet' Slating
Tree Planting Individual species in planting (see notes for details)	Paving Type 1 Observed/declared zone Not paving with timber see notes	Bike Rack	Feature Sculptures
Large & Small Shrub Planting (see notes for details)	Paving Type 2 see notes	Washbasin	Hosecock
Assault Planting (see notes for details)	Paving Type 3 see notes	Rolling Ballot	Irrigation controller
Mass Planting & Groundcover (see notes for details)	Paving Type 4 see notes	Proposed Schedule	H/W Timber Edge
	Paving Type 5 Irregular surfaces shown but with clear open paths with raised public L&S to path (see notes)	Park Light - Refer Lighting Engineer's detail	

Key Plan:



SITE IMAGE



Client:
Toplace

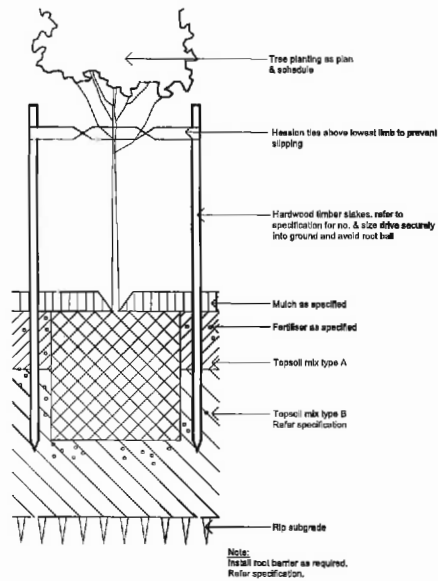
Project:
Park Grove West
Pemberton Street
Botany, NSW, 2019

Drawing Name:
Planting Plan
Level 2 & Level 3

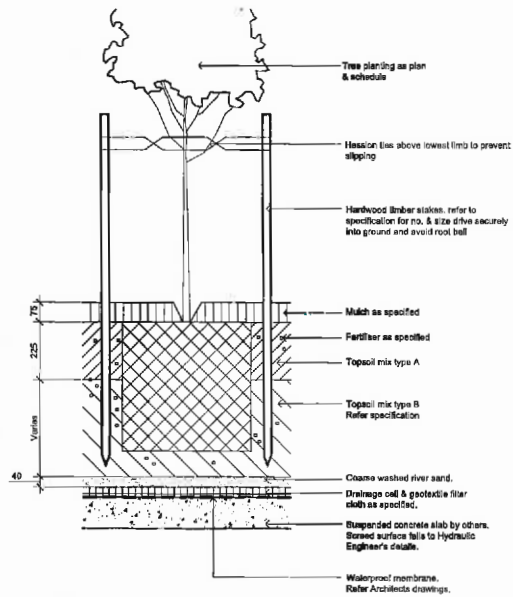
Scale: 1:100 @ A1
Job Number:
SS14-2774

FOR APPROVAL

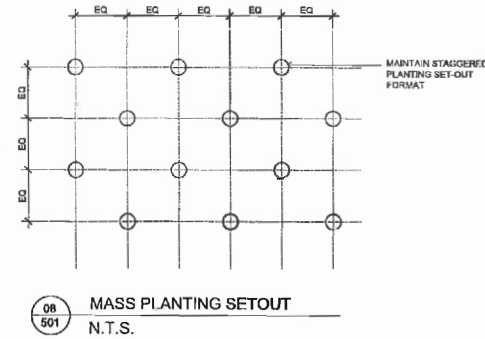
Drawing Number:
405 G



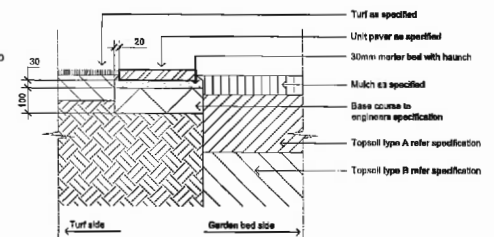
01 75-200L TREE PLANTING ON GRADE
SCALE 1:10



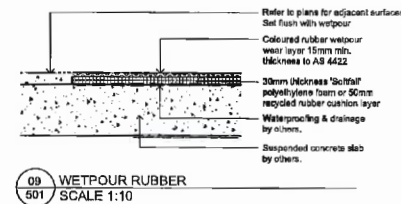
04 75-200L TREE PLANTING ON SLAB
SCALE 1:10



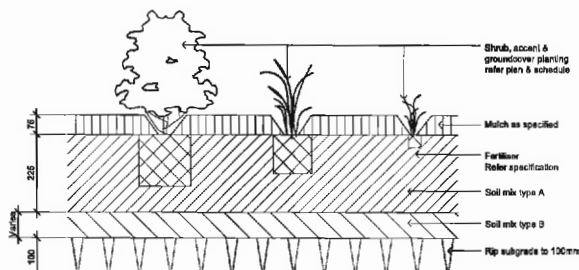
08 MASS PLANTING SETOUT
N.T.S.



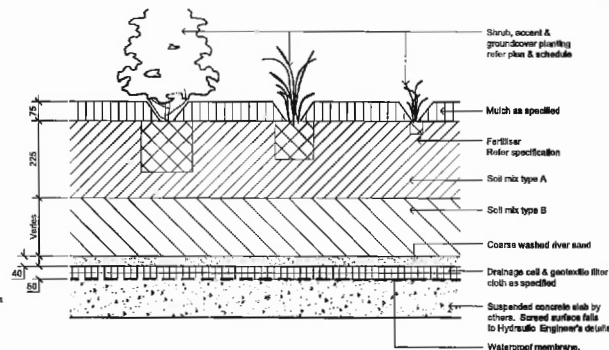
12 UNIT PAVER EDGE
SCALE 1:10



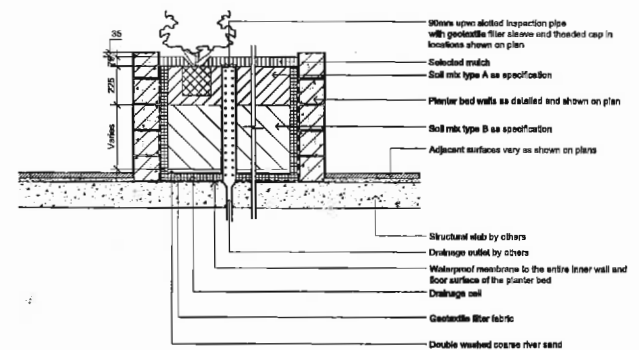
09 WETPOUR RUBBER
SCALE 1:10



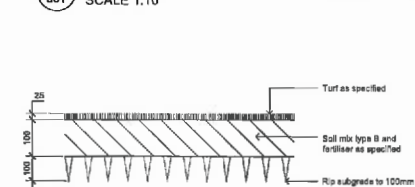
02 SHRUB, ACCENT & GROUNDCOVER PLANTING ON GRADE
SCALE 1:10



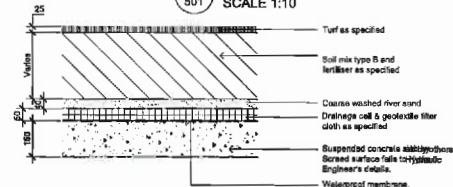
05 SHRUB, ACCENT & GROUNDCOVER PLANTING ON SLAB
SCALE 1:10



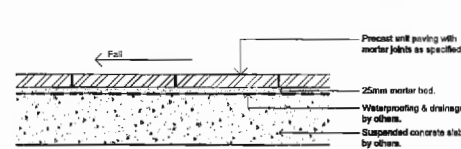
10 TYP. RAISED PLANTER BED ON SUSPENDED SLAB - SECTION
SCALE 1:20



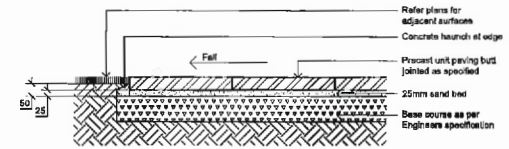
03 TURF ON EVEN GRADE
SCALE 1:10



06 TURF ON SUSPENDED SLAB
SCALE 1:10



07 PRECAST UNIT PAVERS ON SUSPENDED SLAB
SCALE 1:10



11 PRECAST UNIT PAVERS ON GRADE
SCALE 1:10

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The contractor shall check and verify all work on site (including work by others) before commencing the landscape installation. Any discrepancies are to be reported to the Project Manager at Landscaping Architects prior to commencing work. Do not waste this drawing. Any required dimensions not shown shall be related to the landscape installed for construction.

Legend	Description
D	Design/Signing Adjustment
P	Issue for Approval
A	Issue for Approval
C	Issue for S34 Conference
F	For Review
M	Issue for S34 Conference
A	Development Application
	Issue Description

Date	Check	Date
02.08.2017	RS	
20.07.2017	PH	
17.02.2017	JP	
28.10.2016	NR	
25.10.2016	NS	
27.06.2016	PH	
27.06.2015	CV	

LEGEND

Key Plan



SITE IMAGE



Client: Toplace

Project: Park Grove West Pemberton Street Botany, NSW, 2019

Drawing Name: Landscape Details

Scale: Job Number: SS14-2774

FOR APPROVAL

Drawing Number:

501 G

Schedule 9: Construction Lease

Form: 07L
Licence: 05-11-667
Licensee: Softdocs
HWL Ebsworth

LEASE
New South Wales
Real Property Act 1900

Leave this space clear. Affix additional pages to the left-hand corner.

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

STAMP DUTY

Revenue NSW use only

(A) TORRENS TITLE

Property leased: if appropriate, specify the part or premises

Folio

(B) LODGED BY

Document
Collection
Box

Name, Address or DX, Telephone and Customer Account Number if any

CODE

Reference (optional):

L

(C) LESSOR

BAYSIDE COUNCIL ABN 80 690 785 443 BRANCH 003

The lessor leases to the lessee the property referred to above.

(D)

Encumbrances (if applicable):

(E) LESSEE

JKN AUSTRALIA PTY LIMITED ACN 151 283 635

(F)

TENANCY:

(G) 1. TERM Three (3) years six (6) months

2. COMMENCING DATE

3. TERMINATING DATE

4. With an OPTION TO RENEW for a period of N.A.
set out in clause N.A. of N.A.

5. With an OPTION TO PURCHASE set out in clause N.A. of N.A.

6. Together with and reserving the RIGHTS set out in clause N.A. of Annexure "A"

7. Incorporates the provisions or additional material set out in ANNEXURE(S) "A" hereto.

8. Incorporates the provisions set out in N.A.
No. N.A.

9. The RENT is set out in clause 2 of Annexure "A".

DATE / /

(H) I certify I am an eligible witness and that the authorised officer of the lessor signed this dealing in my presence. [See note* below]

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness:

Signature of authorised officer:

Name of witness:
Address of witness:

Authorised officer's name:
Authority of officer:
Signing on behalf of: BAYSIDE COUNCIL ABN 80 690 785 443 BRANCH 003

Note: where applicable, the lessor must complete the statutory declaration below

Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the company named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.
Company: JKN AUSTRALIA PTY LIMITED ACN 151 283 635
Authority: Section 127(1) of the Corporations Act 2001

Signature of authorised person:

Signature of authorised person:

Name of authorised person:
Office held:

Name of authorised person:
Office held:

(I) STATUTORY DECLARATION #

I,

solemnly and sincerely declare that -

- 1. The time for the exercise of option to renew/purchase in expired lease No. has ended; and
2. The lessee under that lease has not exercised the option.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act 1900 and I certify this lease correct for the purposes of the Real Property Act 1900.

Made and subscribed at in the State of New South Wales on

in the presence of of

[] Justice of the Peace (J.P. Number) [] Practising Solicitor

[] Other qualified witness [specify]

** who certifies the following matters concerning the making of this statutory declaration by the person who made it:

- 1. I saw the face of the person OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person has a special justification for not removing the covering; and
2. I have known the person for at least 12 months OR I have confirmed the person's identity using an identification document and the document I relied on was [Omit ID No.]

Signature of witness: Signature of applicant:

As the services of a qualified witness cannot be provided at lodgment, the statutory declaration should be signed and witnessed prior to lodgment. ** If made outside NSW, cross out witness certification. If made in NSW, cross out the text which does not apply.

'A'

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1. Definitions and interpretation clauses

1.1 Definitions

In this Lease:

Authorised Officer	means: <ul style="list-style-type: none"> (a) a director, secretary or an officer whose title contains the word 'manager'; (b) a person performing the functions of any of them; or (c) any other person appointed to act as an Authorised Officer for the purpose of this Lease.
Authority	includes any government or semi-government, statutory, public or other authority or body with jurisdiction over the Premises or any matter or thing in relation to the Premises.
Buildings A1, A2, A3 and B1	has the same meaning as in the Planning Agreement.
Business Day	means any day in New South Wales on which banks generally are open for business which is not a Saturday, Sunday or public holiday.
Commencing Date	means the date specified in Item (G)3 of page 1 of this Lease.
Default	means a breach of this Lease by the Tenant and includes the defaults listed in clause 10.1. For the purpose of determining whether there has been a breach of this Lease by the Tenant, anything done by a Tenant's Associate is taken to have been done by the Tenant.
Development	has the same meaning as used in the Planning Agreement.
Development Site	has the same meaning as used in the Planning Agreement.

Dispute Notice	means a notice given by the Tenant to the Landlord which: <ul style="list-style-type: none">(a) sets out the Tenant's objections to the Landlord's assessment of the Rent stated in the Market Review Notice; and(b) states the Tenant's assessment of the current market rent.
Environmental Law	means any Law or State protection policy incorporated by reference to or being part of any Law relating to protection of the environment.
Hazardous Substance	means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed.
Interest Rate	means 2% above the rate quoted on the day a payment under this Lease is due by the Landlord's principal banker (as nominated by the Landlord) on unsecured overdraft accommodation in excess of \$100,000.00.
Item	means an item in the Reference Schedule unless the contrary intention appears.
Landlord	means the lessor named on the front page of this Lease.
Law	means common law, principles of equity and all statutes (including Environmental Laws), rules, regulations, proclamations, ordinances or by-laws, present or future and includes applicable Australian Standards and Codes of Practice.
Lease	means this Lease.
Liability	means each and every cost, expense, liability, obligation, action, demand, loss, claim and all damages.
Occupation Certificate	has the same meaning as in the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> .

Payment Date	means the Commencing Date and each anniversary of the Commencing Date during the Term.
Performance Security	means the bank guarantee to be provided and maintained by the Tenant in accordance with this Lease.
Permitted Use	means the use in Item 4.
Planning Agreement	means the Agreement made between the Landlord and the Tenant under Section 93F of the Environmental Planning & Assessment Act 1979 in relation to the Development Site and the Development.
Premises	means the premises described on the front page of this Lease and Item 1.
Reference Schedule	means the reference schedule which is attached to this Lease.
Rent	means the annual rent specified in Item 2, as varied under this Lease.
Requirements	means any requirements, notices, orders or directions received from or given by any Authority.
Services	means the services provided by Authorities, the Landlord or others to the Premises, including electricity, gas, power, water, sewerage, security, fire safety and control and communications together with all plant and equipment relating to those services.
Sign	means a sign, billboard, advertisement, notice or similar thing.
Tenant	means the lessee named on the front page of this Lease.
Tenant's Associates	means the Tenant's employees, officers, agents, contractors, consultants, subtenants, licensees and invitees.
Tenant's Cleanup Obligations	means all of the Tenant's obligations under clause 5.4 and 5.5.

Tenant's Property means the plant, equipment, fixtures, fittings and other property in, on or fixed to the Premises which is not Landlord's Property.

Term means the term of this Lease commencing on the Commencing Date and expiring on the Terminating Date.

Terminating Date means the earlier of:

- (a) the date specified in Item (G)3 of page 1 of this Lease; or
- (b) the date of issue of any Occupation Certificate in relation to Buildings A1, A2, A3 and B1.

WH&S Act means the Work Health and Safety Act 2011 (NSW).

WH&S Regulation means the Work Health and Safety Regulation 2011 (NSW).

Works has the same meaning as used in the Planning Agreement.

1.2 Interpretation

The following apply in the interpretation of this Lease.

- (a) A reference to this Lease means either the agreement set out in this document or the document itself.
- (b) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Lease.
- (f) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Lease, their substitutes and assigns.

- (h) An agreement on the part of, or in favour of, **two or more persons binds** or is for the benefit of them jointly and severally.
- (i) **Includes means includes without** limitation.
- (j) Where a **word** or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (k) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and **includes executing** a document.
- (l) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Lease.
- (m) **Item numbers** refer to those in the Reference Schedule unless the contrary intention appears.
- (n) A reference to dollars or \$ is to Australian currency.
- (o) A heading is for reference only. It does not affect the meaning or interpretation in this Lease.
- (p) Any schedule attached to this Lease forms part of it.
- (q) Inconsistency between any clause of this Lease and any provision in any schedule or attachment, the clause of this Lease **will prevail unless the contrary intention appears**.
- (r) No rule of construction applies to the disadvantage of a party to this Lease only because that party was responsible for the preparation of this Lease.
 - (i) If a party's approval is required in connection with this Lease:
 - (ii) the party requiring the approval must obtain the approval in writing; and
- (s) unless this Lease provides otherwise, the approving party must not **unreasonably delay or withhold its approval or unreasonably attach conditions to its approval(s)**. The Landlord may exercise its rights under this Lease at any time, unless this Lease provides otherwise.

2. Rent

2.1 The Rent is payable in a single lump sum payment:

- (a) for the first year of the Term, by the Commencing Date, receipt of which is acknowledged by the Landlord; and
- (b) for each subsequent year of the Term, by the anniversary of the Commencing Date.

3. Payment Conditions

3.1 Manner of Payments

The Tenant must make payments due under this Lease:

- (a) without demand, unless otherwise stated in this Lease;
- (b) without set-off, counterclaim, withholding or deduction;
- (c) to the Landlord or as the Landlord directs; and
- (d) by direct deposit, or as the Landlord directs.

3.2 No next Payment Date

If a payment is due on the next Payment Date and there is no next Payment Date, then the Tenant must pay the amount within 7 days of receipt of the Landlord's demand for payment.

3.3 Payment obligations

Expiry or termination of this Lease does not affect the Tenant's obligations to make payments arising during the Term.

3.4 Interest

If any amount payable by the Tenant under this Lease is not paid on its due date, then the Tenant must pay to the Landlord Interest on that money at the Interest Rate calculated from the due date to the date of payment.

4. Assignment and subletting

4.1 Restriction

- (a) The Tenant must not assign or transfer this Lease except in accordance with clause 4.2.
- (b) The Tenant must not grant any licence or sublease of the Premises or any part of the Premises.

4.2 Conditions

The Tenant may assign or transfer this Lease to another party (New Tenant) if:

- (a) the New Tenant takes a novation of the Tenant's rights and obligations (as Developer) under the Planning Agreement, simultaneously with the assignment or transfer of this Lease;
- (b) the Tenant is not in Default or the Landlord has expressly waived any rights and obligations arising from the Default;
- (c) the Tenant gives to the Landlord at least one (1) month's written notice if the Tenant wants to exercise its rights under this clause and discloses in that notice the full name, address and occupation or principal business of the New Tenant and particulars of the proposed dealing;
- (d) the Tenant complies with clause 4.3 in respect of assignments and transfers;
- (e) the Tenant complies with its obligations under clause 8; and
- (f) the Tenant and the New Tenant comply with the Landlord's reasonable requirements in relation to the documentation, stamping and registration of the proposed assignment or transfer (including as to security).

4.3 Assignments and transfers

In the case of an assignment or transfer:

- (a) the Tenant must satisfy the Landlord that the New Tenant is:
 - (i) respectable, responsible and of sound financial standing; and
 - (ii) capable of paying the Rent and fully complying with the Tenant's obligations under this Lease (including the Clean Up Obligations);
- (b) the Tenant must provide or procure that the New Tenant provides any security reasonably required by the Landlord; and
- (c) the Tenant and the New Tenant must enter into a deed in the form reasonably required by the Landlord under which:
 - (i) the Tenant releases the Landlord from all claims which the Tenant may have against the Landlord in connection with this Lease; and
 - (ii) the New Tenant agrees to be bound by this Lease as if the New Tenant was the Tenant.

4.4 Securitiles

The Tenant may only create or allow to come into existence:

- (a) a security over the Tenant's interest in this Lease; or
- (b) a lease or security affecting the Tenant's Property

with the Landlord's written approval. If the Landlord gives its approval, the Tenant must provide any waiver reasonably required by the Landlord.

5. Maintenance and yielding up

5.1 Maintenance

The Tenant must:

- (a) maintain and keep the Premises and the Tenant's Property located in or exclusively servicing the Premises in good repair and condition; and
- (b) at the expiry or earlier termination of the Term, yield up the Premises in good repair and condition.

5.2 Tenant's Property

Without limiting clause 5.1, at the expiry or earlier termination of the Term, the Tenant must remove any Tenant's Property from the Premises and make good any damage to the Premises occurring as a result.

5.3 Tenant to give notice of accidents and defects

The Tenant must immediately give notice to the Landlord of:

- (a) any accidents that occur or damage to or defects in the Premises or in the Services; and
- (b) any circumstances likely to cause any damage or injury within the Premises or to the Services,

of which the Tenant is aware.

5.4 The Tenant must indemnify the Landlord and keep the Landlord indemnified from and against any claim made against the Landlord whether in contract or in tort pursuant to any statute, in equity or otherwise at law or in relation to any contamination, waste, hazardous discharge, environmental event or environmental complaint arising out of or in connection with the Tenant's occupation and use of the Premises in accordance with this Lease.

5.5 The Tenant irrevocably and unconditionally agrees that if as a result of any environmental audit it is disclosed the necessity for any environmental clean up of the Premises, the Tenant must at its expense, promptly clean up the Premises to the Landlord's and relevant Authorities' satisfaction as soon as practicable without contribution from the Landlord.

6. Use of Premises

6.1 Permitted use

The Tenant must use the Premises for the Permitted Use only.

6.2 Landlord does not warrant use

- (a) The Landlord gives no warranty as to the suitability of the Premises for the Permitted Use.
- (b) The Tenant must satisfy itself and is taken to have accepted this Lease with full knowledge of, and subject to, any prohibitions or restrictions on the use of the Premises under any Laws or Requirements.

6.3 Tenant to pay utilities

The Tenant must pay:

- (a) all charges for Services connected to the Premises to the proper Authorities; and
- (b) all charges for Services connected to the Premises and metered to the Landlord, as reasonably notified by the Landlord.

6.4 Positive use obligations

- (a) The Tenant must:
 - (i) comply with all Laws and the requirements of any Authority in relation to the Premises or the Tenant's use of the Premises;
 - (ii) use its best endeavours to prevent any breach of any Environmental Law;
 - (iii) promptly report any breach of any Environment Law;
 - (iv) provide to the Landlord as soon as reasonably practicable details of any notices received or proceedings commenced against the Tenant pursuant to any Environmental Law:
 - (A) relating to any breach or alleged breach by the Tenant of any Environmental Law;
 - (B) requiring the Tenant to carry out works to decrease the affectation of the Premises by any Hazardous Substance.
 - (v) ensure that all waste is appropriately disposed of; and

- (vi) take any steps necessary to control any pest infestation occurring within the Premises and, if required by the Landlord, engage and pay for a pest exterminator approved by the Landlord and ensure that such extermination takes place.
- (b) The Tenant acknowledges and agrees that in relation to undertaking the Permitted Use, the Tenant:
- (i) is a person conducting a business or undertaking;
 - (ii) will have management and control of the Premises during the Term;
 - (iii) must ensure, so far as reasonably practicable, that the Premises, the means of entering and existing the Premises and anything arising from the Premises are without risks to health and safety of any person;
 - (iv) must provide site security measures to ensure entry to and egress from the Premises is only by persons authorised by the Tenant; and
 - (v) must discharge the duties under the WH&S Act and the WH&S Regulation of persons conducting a business or undertaking and persons with management or control of a workplace.

6.5 Negative use obligations

The Tenant must not:

- (a) keep or use inflammable or dangerous substances on the Premises, without the Landlord's without approval;
- (b) do anything in or on the Premises which, in the opinion of the Landlord is or would become a nuisance, disturbance, obstruction or cause of damage to the Landlord or to other tenants or occupiers of the Premises;
- (c) use the Premises in any noisy, noxious or offensive manner;
- (d) obstruct or interfere with any of the entrances to the Premises; or
- (e) do anything that contaminates or pollutes the Premises or its environment.

6.6 Approval to display Signs

Before displaying a Sign on the outside of the Premises or anywhere that can be seen from the outside of the Premises, the Tenant must:

- (a) obtain the Landlord's written approval (which may not be unreasonably withheld); and
- (b) obtain the approval of any relevant Authority.

7. Insurance

7.1 Insurance

The Tenant must **at the Tenant's expense, effect and maintain** in respect of the Premises and any area outside the Premises in which the Tenant is required to undertake any work in accordance with this Lease at all times during the Term, in the name of the Tenant:

- (a) a public liability policy in such amount as may be reasonably required from time to time by the Tenant but in any event for not less than Twenty million dollars (\$20m) for any one claim, bearing an endorsement extending indemnity to such other risks of an insurable nature for which the Tenant is obliged to indemnify the Landlord by this Lease and noting the interest of the Landlord; and
- (b) a workers compensation policy in respect of all employees and all employees of subcontractors with unlimited common law indemnity.

7.2 The Tenant must within thirty (30) days of written demand by the Landlord, produce to the Landlord certificates of currency of the insurance policies which the Tenant is required to effect and maintain under this Lease.

7.3 Release

- (a) The Tenant uses the Premises at the Tenant's sole risk.
- (b) The Tenant releases the Landlord to the full extent permitted by law from and against all Liabilities which arise from any accident, damage, injury or death occurring to any person or property in or about the Premises.

7.4 Tenant indemnifies Landlord

The Tenant indemnifies the Landlord against all Liabilities in connection with:

- (a) the use by the Tenant or the Tenant's Associates of the Premises or any of the Services;
- (b) any faulty Tenant's Property;
- (c) any accident or damage to or loss of property or injury or death suffered by any person arising in or near the Premises by reason of any act, omission or default by the Tenant or the Tenant's Associates;
- (d) any accident or damage to or loss of property or injury or death suffered by any person from any cause arising by reason of the use of the Premises by the Tenant or the Tenant's Associates; and
- (e) any Default.

7.5 Exception

A release or indemnity in clauses 7.3 and 7.4 does not apply to the extent that any Liability or accident, damage, injury or death is caused or contributed to by the negligence, or other wrongful act or default of the Landlord or the Landlord's employees, agents or contractors.

8. Quiet enjoyment

Subject to the Landlord's rights, while the Tenant complies with its obligations under this Lease, it may occupy the Premises during the Term without any interruption from the Landlord.

9. Landlord's obligations and rights

9.1 Rights of entry and repair

The Landlord may enter the Premises to inspect and repair after giving the Developer 24 hours notice (unless an emergency).

9.2 Services

The Landlord reserves the right to use pipes, ducts, conduits, cables and wires passing or leading through the Premises and to pass and run water, air, electricity, telecommunications, sewerage, drainage, gas and any other services through those pipes, ducts, conduits, cables and wires.

9.3 Landlord's Agents

The Landlord may appoint agents to exercise its rights and perform its obligations under this Lease. If the Landlord notifies the Tenant that it has done so, the Tenant must deal with the Landlord's agents as if they were the Landlord in relation to matters delegated to them until the Landlord notifies the Tenant that the agents are no longer the Landlord's agents for those matters. Communications from the Landlord override those from the agents if they are inconsistent.

9.4 Change of Landlord

If the Landlord sells the Premises so that the Tenant becomes obliged to perform its obligations under this Lease in favour of another person, then:

- (a) the Landlord is released from its obligations under this Lease, arising after the Tenant receives notice of that event;
- (b) the Tenant must procure the changes required by that other person to the insurances referred to in clause 7.1; and

- (c) the Tenant must enter into documents and assurances reasonably required by the Landlord to enable that other person to enforce the benefit of all obligations under this Lease.

10. Default

10.1 Rights of re-entry on Default

If:

- (a) any Rent is in arrears for 14 days although no formal demand has been made;
- (b) any other money payable by the Tenant under this Lease is not paid within 14 days after the Landlord asks the Tenant to pay it;
- (c) the Planning Agreement comes to an end as a result of the Tenant's Default or otherwise; or
- (d) the Tenant repudiates this Lease,

then the Landlord may terminate this Lease by re-entering the Premises or any part thereof.

10.2 Landlord's Rights

The Landlord may act under clause 15.1:

- (a) despite any prior waiver or failure to take action by it or grant of indulgence to the Tenant in respect of any Default whether past or continuing; and
- (b) without prejudicing its other rights.

10.3 Termination

If this Lease is terminated by the Landlord the Tenant indemnifies the Landlord against any Liabilities arising (whether before or after termination of this Lease) in connection with any Default giving rise to the termination of this Lease, including the Landlord's loss of benefit of the Tenant performing its obligations under this Lease from the date of that termination until the Terminating Date.

10.4 Damages

If this Lease is lawfully terminated by the Landlord, the Landlord may recover damages from the Tenant for the loss suffered by the Landlord for:

- (a) Rent arrears;
- (b) damages suffered by the Landlord as a result of the breach of the Tenant's repudiation of this Lease, including damages suffered by the Landlord as a

result of the failure of the Tenant to fully perform all its obligations under this Lease for the remainder of the Term; and

- (c) all costs and disbursements incurred in the recovery or attempted recovery of Rent and possession of the Premises.

10.5 No Discharge

The re-entry or termination by the Landlord under this Lease does not confer on the Tenant a discharge of the Tenant's obligations. The Landlord's right to recover damages from the Tenant is not affected or limited by any of the following:

- (a) the Tenant abandoning or vacating the Premises;
- (b) the Landlord accepting the Tenant's repudiation; or the parties' conduct constituting a surrender by operation of law.

11. Guarantee

The Guarantor named in Item 6 guarantees performance of the Tenant's obligations under this Lease (including the Tenant's Cleanup Obligations).

12. Costs

12.1 Tenant to pay Landlord's costs

The Tenant must promptly pay:

- (a) for everything it must do;
- (b) the Landlord's reasonable legal costs and disbursements in connection with the preparation, negotiation, registration and completion of this Lease (on a GST inclusive basis);
- (c) all reasonable costs, charges and expenses which the Landlord becomes liable for arising out of any Default including all reasonable solicitors' and other consultants' fees on a full indemnity basis;
- (d) all reasonable costs incurred by the Landlord in relation to:
 - (i) any approval required (including any consultants' fees);
 - (ii) any actual or proposed assignment; and
 - (iii) any surrender or determination of this Lease other than by effluxion of time; and

- (e) all reasonable legal costs connected to the exercise or attempted exercise of any right or remedy by the Landlord,

in connection with this Lease.

13. Caveats

The Tenant may not:

- (a) lodge a caveat on the title to the Premises; or
- (b) allow a caveat to be lodged by a person claiming through the Tenant to remain on that title.

14. Notices

14.1 Form of Notices

Any notice or other communication under or in connection with this Lease (notice) must be:

- (a) in legible writing;
- (b) signed by the party giving it (sender) or by its Authorised Officer; and
- (c) delivered by hand or sent by post (air mail if sent to an address in another country) to the relevant address set out in Item 5; or
- (d) sent to the relevant fax number set out in Item 5.

14.2 Change of Address

A party may change its address or fax number for the purpose of notices by giving notice of that change to each other party in accordance with the provisions of clause 19.1.

14.3 Service of Notices

Notices are taken to be given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, on the third (seventh, if sent to an address in another country) day after the date of posting; and

- (c) in the case of delivery by fax, at the time shown on a transmission report by the machine which sent the fax confirming the notice was sent (uninterrupted) in its entirety to the fax number of the recipient.

14.4 Timing of notices by fax

If a notice by fax is given:

- (a) on a day in which business is not generally carried on in the place in which the fax is received, or
- (b) after 4.00 pm (local time) on a day in which business is generally carried on in the place in which the fax is received,

the notice is given at the commencement of the next business day in the place in which the fax is received.

15. Performance Security

- 15.1 Simultaneously upon execution of this Lease, the Tenant must deliver to the Landlord an unconditional bank guarantee in a form acceptable to the Landlord and in favour of the Landlord for the amount specified in Item 7 as security for the performance of the Tenant's Cleanup Obligations.
- 15.2 The Performance Security must be held by the Landlord during the Term as security for the performance of the Clean Up Obligations and the Landlord may from time to time without prejudice to the Landlord's other rights under this Lease, call in any amount upon the Performance Security and apply that amount in or towards satisfaction of any amount payable by the Tenant to the Landlord under clauses 5.4 and 5.5, which may become due and payable as a result of any breach of the Tenant's Clean Up Obligations.
- 15.3 The Tenant irrevocably and unconditionally agrees:
 - (a) that any calling in of the Performance Security in accordance with this Lease must not operate or be deemed to constitute a waiver or release of any breach of the Tenant's Obligations;
 - (b) that the Tenant must not assign or encumber or purport to assign or encumber the Performance Security; and
 - (c) that the Landlord must not be bound by any such assignment or encumbrance or purported assignment or encumbrance.

16. GST

In this Lease, GST Law has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), and terms used which are not defined in this Lease, but

which are defined in the GST Law, have the meanings given in the GST Law. Unless stated otherwise, all consideration provided under this document is exclusive of GST. If GST is payable by the supplier, the recipient must, upon receipt of a tax invoice from the supplier, pay the supplier an amount equal to the GST payable on that supply.

17. Miscellaneous

17.1 Term

Notwithstanding Item G(3) of the front page of the Lease, the Term will expire on the earlier of:

- (a) 3.5 years from the date of dedication of the Premises to Council in accordance with the Planning Agreement; or
- (b) the date of issue of any Occupation Certificate in relation to Buildings A1, A2, A3 and B1.

17.2 Exclusion of statutory provisions

The covenants powers and provisions implied in leases by virtue of sections 84, 85 and 86 of the *Conveyancing Act 1919* (NSW) do not apply to this Lease.

17.3 Application of legislation

To the extent permitted by law, the application to this Lease of any moratorium or other Act, ordinance or the like, whether state or federal, having the effect of extending the Term, reducing or postponing the payment of rent or otherwise affecting the operation of this Lease is expressly excluded.

17.4 Tenant to recognise superior or concurrent interest

The Tenant must permit any person having any interest in the Premises superior to or concurrent with the Landlord to exercise or perform that person's or the Landlord's rights and obligations under this Lease.

17.5 Party other than Landlord entitled to rents

If a person other than the Landlord becomes entitled to receive the Rent either by operation of law or otherwise, the Tenant must allow that person the benefit of all covenants and agreements on the part of the Tenant under this Lease. The Tenant, at the cost of the Landlord, must enter into any covenants with that other person as the Landlord may reasonably require.

17.6 Tenant not to reduce its obligations

The Tenant must not, without the approval of the Landlord, do anything to reduce or diminish the Rent or impose or cause or permit to be imposed on the Landlord any

Liabilities of the Tenant under this Lease even though entitled to do so whether by statute, ordinance, proclamation, order, regulation or moratorium (present or future) or otherwise.

17.7 Tenant assumes risk

If the Tenant is obliged, required or authorised under this Lease to do any act, that act is, unless this Lease expressly provides otherwise, at the sole risk and expense of the Tenant.

17.8 Landlord's statement prima facie evidence

In the absence of manifest error on its face, any statement by the Landlord or the Landlord's agent certifying the amount payable by the Tenant under any of the provisions of this Lease is prima facie evidence of the amount payable.

17.9 Tenant's Associates

The Tenant must ensure that the Tenant's Associates do not cause the Tenant to breach its obligations under this Lease. Any act or omission by the Tenant's Associates in connection with the Premises is taken to be an act or omission of the Tenant.

17.10 Entire agreement

This Lease:

- (a) records the entire agreement between the parties; and
- (b) supersedes all previous negotiations, understandings, representations and agreements,

in relation to the subject matter of this Lease.

17.11 Governing Law

This Lease is governed by the laws of New South Wales. The parties submit to the jurisdiction of its courts.

17.12 No waiver

The following provisions apply in respect of waiving rights under this Lease:

- (a) a party does not waive a right or remedy in connection with this Lease if it:
 - (i) fails to exercise its right or remedy;
 - (ii) only partially exercises the rights or remedy; or
 - (iii) delays in exercising the right or remedy;

- (b) a party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - (i) further exercise the right or remedy; or
 - (ii) exercise another right or remedy; and
- (c) a waiver is effective only:
 - (i) to the extent that the party giving it expressly states in writing;
 - (ii) in the specific instance in which it is given; and
 - (iii) for the purpose for which it is given.

17.13 Variation

No provision of this Lease nor a right conferred by it can be varied except in writing signed by the parties.

17.14 Invalidity

The following provisions apply in respect of reading down or severing the provisions of this Lease:

- (a) a word or provision must be read down if:
 - (i) the Lease or provision is void, voidable, or unenforceable if it is not read down; and
 - (ii) the word or provision is capable of being read down;
- (b) a word or provision must be severed if, despite the operation of clause 21.13(a), the Lease or provision is void, voidable or unenforceable if the word or provision is not severed; and
- (c) the remainder of this Lease has full effect even if clause 21.13(b) applies.

Reference Schedule

Item 1	Premises (clause 1.1)	
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Item 2	Rent (clause 2)	\$1 per annum GST exclusive.
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Item 3	Review Dates/Types (clause 1.1)	N/A
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Item 4	Permitted Use (clause 6.1)	To access the Development Site and use the Premises for storage in connection with undertaking the Development and the Works.
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Item 5	Address for Service of Notices (Clause 14)	Landlord's address for service: Address: 2 Bryant Street Rockdale NSW 2216 Facsimile: 02 9562 1777 michael.mccabe@bayside.nsw.gov.au Tenant's address for service: Address: 121 Majors Bay Road Concord NSW 2137 Facsimile: (02) 9747-0540 mfitzpatrick@toplace.com.au
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Item 6	Guarantor (clause 11)	Jean Nassif
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Item 7	Performance Security	
Item 8	(clause 15)	

Signing page

Executed as deed

Landlord's Signature

Executed on behalf of Bayside Council in the presence of:

Signature of Director

Signature of General Manager

Full name (print)

Full name (print)

Tenant's Signature

Executed by JKN Australia Pty Limited
ACN 151 283 635 in accordance with
section 127 of the *Corporations Act 2001*
(Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Guarantor's Signature

Signed, sealed and delivered by
in the presence of:

Signature of witness

Signature of

Full name of witness (print)

Address of witness (print)

Appendix: Explanatory Note

(Clause 49)

Environmental Planning and Assessment Regulation 2000

(Clause 25E)

Explanatory Note

Proposed Planning Agreement

Under s93F of the *Environmental Planning and Assessment Act 1979*

2. Parties

Bayside Council ABN 80 690 785 443 Branch 003 of 2 Bryant Street, ROCKDALE NSW 2216 (Council)

and

JKN Australia Pty Limited ACN 151 283 635 of 121 Majors Bay Road, Concord 2137

(Developer)

3. Description of the Land to which the proposed Planning Agreement applies

3.1 16 Pemberton Street, Botany as described in **Schedule 2** to the Agreement.

3.2 This Developer is the owner of the Land.

4. Description of proposed Development

4.1 The proposed mixed use development on the land comprising two residential flat buildings ranging in height between 4-7 storeys containing 269 residential apartments and two retail tenancies comprising 323m² above 2 levels of basement car parking comprising 479 spaces.

5. Summary of objectives, nature and effect of the proposed Planning Agreement

5.1 Objectives of proposed Planning Agreement

5.1.1 The objectives of the proposed Planning agreement are to:

- provide Development Contributions for the benefit of the public in the form of the dedication of land free of cost and the carrying out of Work, as outlined below; and
- achieve the provision of these Development Contributions with greater certainty and at less risk and less cost to Council than would be possible through the outright purchase of the land or the use of section 94 development contributions alone.

5.2 Nature and effect of proposed Planning Agreement

- 5.2.1 The proposed Planning Agreement will come into effect when executed by the parties.
- 5.2.2 The proposed Planning Agreement will require the Developer to dedicate their Land to Council free of cost for the following public purposes (as described in Part A of **Schedule 3** to the Agreement):
- widening of Pemberton Street,
 - public open space for Council Dedicated Park (approximately 2800m² - not including the land that forms part of SP 91307);
 - public roads, being the dedication of the southern section of Mahroot Street and the dedication of the cul - de - sac adjoining Mahroot Street and Buildings E and F; and
 - easements for perpetual access rights for the public.
- 5.2.3 The proposed Planning Agreement will also require the Developer to carry out the Work for a public purpose (as described in Part B of **Schedule 3** to the Agreement):
- provide half road reconstruction of Pemberton Street (including new footpath, kerb, gutter and verge); and
 - embellishment of the Council Dedicated Park in accordance with the Specifications.
- 5.2.4 The proposed Planning Agreement specifies, in Schedule 3, that certain requirements of the agreement must be complied with before a construction certificate or occupation certificate can be issued.

6. Assessment of the merits of the proposed Planning Agreement

6.1 The impact of the proposed Agreement on the public or any relevant section of the public

- 6.1.1 The proposed Planning Agreement impacts on the public by promoting the public interests as outlined in **paragraph 6.2.1**.

6.2 How the proposed Planning Agreement promotes the public interest and one or more objects of the Environmental Planning and Assessment Act 1979

- 6.2.1 The proposed Planning Agreement promotes the public interest by securing the provision of Development Contributions, including the dedication of land free of cost and the carrying out of Work, for the purposes of improving community facilities, infrastructure and services and, in general, for the purposes of improving and promoting the community's quality of life.
- 6.2.2 The proposed Planning Agreement promotes the objects of the Environmental Planning and Assessment Act 1979 by;
- encouraging the development and conservation of natural and urban resources for the purpose of promoting the social and economic welfare of the community and a better environment
 - encouraging the promotion and co-ordination of the orderly and economic use and development of land;

- encouraging the provision of land for public purposes;
- encouraging the provision and co-ordination of community services and facilities; and
- encouraging ecologically sustainable development and the protection of the environment.

6.3 For Planning Authorities:

6.3.1 Development corporations – How the proposed Planning Agreement promotes its statutory responsibilities

N/A

6.3.2 Other public authorities – How the proposed Planning Agreement promotes the objects (if any) of the Act under which it is constituted

The proposed Planning Agreement promotes the Principles of the Local Government Act 1993 by:

- allowing Council to provide facilities appropriate to the current and future needs of the local community and the wider public and to improve and develop the resources of the area through the provision of the new community park and road widening
- allowing Council to implement the principles of ecologically sustainable development through provision of the Community Park and the remediation of any contamination on the Land.

6.3.3 Councils – How the proposed Planning Agreement promotes the elements of the Council's Charter

The proposed Planning Agreement promotes the elements of the Council's Charter by:

- providing appropriate services and facilities for the community in the form of a new Community park and road widening.
- providing for the needs of children by providing the Community Park with appropriate facilities.
- properly managing, restoring and enhancing the environment of the area in a manner that is consistent with and promotes the principles of ecologically sustainable development through the provision of the new Community Park, the enhancement of the existing road network and the remediation of any contamination on the Land.

6.3.4 All planning authorities – Whether the proposed Planning Agreement confirms with the authority's capital works program

The proposed Planning Agreement confirms with Council's capital works program and, furthermore, will enable the program to be advanced with greater timeliness and certainty while reducing the financial risks to Council in its implementation.