

Date 30/10/12

Planning Agreement

2-8 River Road West, Parramatta

Parramatta City Council
ABN 49 907 174 773

and

Emin Pty Limited
ACN: 003 447 274

and

NGP Investments (No. 2) Pty Limited
ABN: 78 001 495 343



Contents

1.	Planning agreement under the EPAA Act.....	2
1.1	Section 93F	2
1.2	Application.....	2
2.	Operation and Development Consent Lapsing	2
2.1	Operation	2
2.2	Development Consent Lapsing.....	2
3.	Definitions	2
4.	Interpretation	5
4.1	Governing Law and Jurisdiction	5
4.2	Persons	5
4.3	Joint and Several	5
4.4	Legislation	5
4.5	Clauses and Headings.....	5
4.6	Severance	6
4.7	Business Day	6
4.8	Number and Gender	6
5.	No Fetter	6
5.1	Discretion	6
5.2	No Fetter	7
5.3	Conflict	7
6.	Registration.....	7
6.1	Procure Registration	7
6.2	Effect of Registration.....	7
6.3	Release	8
7.	Review	8
7.1	Review	8
8.	EPAA Act Application	8
8.1	Sections 94, 94A and 94EF of the EPAA Act	8
8.2	Benefits	8
9.	Public Benefits.....	8
9.1	Delivery	8
10.	Dedicated Land.....	8
10.1	Dedication of Land	8
10.2	Directions	9
11.	Design of the Developer's Works	9
11.1	Definition of Scope	9
11.2	Developer to Prepare.....	9
11.3	Parramatta to Respond.....	9
11.4	Failure to Prepare	9
11.5	Valuation of the Developer's Works.....	10
11.6	Construction plans	10
11.7	Variation or Approval.....	11
12.	Execution of the Developer's Works	11
12.1	Approvals and Consents.....	11

12.2	Construction Work.....	11
12.3	Inspection of Works.....	11
12.4	Indemnity.....	11
12.5	Date of Completion of Works.....	12
12.6	Completion.....	12
12.7	Parramatta Final Inspection.....	12
12.8	Non-completion of Developer's Works.....	12
13.	Defects Liability	13
13.1	Defects in the Developer's Works.....	13
13.2	Security for Defects Liability Period	13
14.	Monetary Contribution	13
14.2	Monetary Contribution Adjustment.....	14
14.3	Application of Monetary Contribution	14
15.	Security	14
15.1	Delivery	14
15.2	Security Amount Adjustment.....	15
15.3	Security Substitution or Top up.....	15
15.4	Appropriation.....	15
15.5	Replacement bank guarantee.....	15
15.6	Security Amount reduction.....	15
15.7	Security return.....	16
16.	Dispute Resolution.....	16
16.1	Notice of Dispute.....	16
16.2	Claim Notice Response	16
16.3	Negotiation.....	16
16.4	Further Notice	16
16.5	Mediation.....	16
16.6	Litigation.....	17
16.7	Continue to Perform Obligations.....	17
17.	Assignment and Other Dealings.....	17
17.1	Land Owner Dealings.....	17
17.2	Restriction on Transfer of Shares	18
17.3	Sale Notification	18
18.	Costs, GST and Interest.....	18
18.1	Preparation Costs	18
18.2	Advertising Costs	18
18.3	GST.....	18
18.4	Interest	19
19.	Notices.....	19
19.1	Service of Notice.....	19
19.2	Particulars for Service.....	19
19.3	Time of Service	19
20.	Approvals and Consents	19
21.	Representations and Warranties	20
22.	New Laws	20
23.	General	20
23.1	Amendment.....	20
23.2	Entire Understanding	20

23.3 Further Assurance..... 20

23.4 Waiver and Exercise of Rights..... 20

23.5 Time of the Essence 21

23.6 No Relationship..... 21

Schedule 1 23

Schedule 2 25

Schedule 3 29

Planning Agreement

Dated / /

Parties

Name	Parramatta Council ABN 49 907 174 773
Address	30 Darcy Street, Parramatta, NSW
Facsimile	(02) 9806 5916
Short name	Parramatta

Name	Emin Pty Limited
	ACN: 003 447 274
Address	12B Clarence Place, Double Bay, NSW
Phone	(02) 9327 1374
Facsimile	(02) 9327 3905
Short name	Developer

Name	NGP Investments (No. 2) Pty Limited
	ABN: 78 001 495 343
Address	GPO Box 4333, Sydney, 2000, NSW
Phone	(02) 9360 8577
Facsimile	(02) 9360 8530
Short name	Developer

Background

- A. Parramatta is the Consent Authority pursuant to the EPAA Act for any Development of the Land, unless provided for by another environmental planning instrument.
- B. The Developer is the owner, or is entitled to be the owner of the Land.
- C. The Developer intends to carry out Development of the Land and to facilitate such Development, is seeking the amendments to the Parramatta LEP described in the Planning Proposal.
- D. The parties wish to enter into a planning agreement in relation to the Developer's offer to provide the Public Benefits on the terms and conditions contained in this planning agreement.



Page 1

It is agreed

1. Planning agreement under the EPAA Act

1.1 Section 93F

The parties agree that this document is a planning agreement governed by subdivision 2 of Division 6 of Part 4 of the EPAA Act.

1.2 Application

The planning agreement constituted by this document applies to the:

1.2.1 the Land; and

1.2.2 any Development of the Land.

2. Operation and Development Consent Lapsing

2.1 Operation

The parties agree that this planning agreement takes effect on the signature of this planning agreement by the parties to it.

2.2 Development Consent Lapsing

2.2.1 This planning agreement will be at an end and taken to have been revoked and neither party will have any obligation to the other if the Minister fails to authorise the Publication in the Gazette of an instrument amending the Parramatta LEP in the manner described in the Planning Proposal.

2.2.2 Each party will sign all documents and do all things reasonably required to procure the removal of this planning agreement as an encumbrance on the Register by appropriate notification or request if the Minister refuses to authorise the Publication in the Gazette of an instrument amending the Parramatta LEP in the manner described in the Planning Proposal.

3. Definitions

In this planning agreement unless expressed or implied to the contrary:

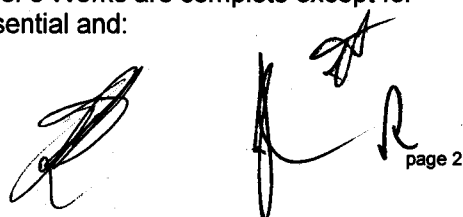
Business Day means any day on which trading banks are open for business in New South Wales other than a Saturday, Sunday or a public holiday in New South Wales.

Claimant has the meaning given to that term in clause 16.1.

Claim Notice has the meaning given to that term in clause 16.1.

Construction Certificate has the meaning given to that term in the EPAA Act.

Completion means the stage in the construction of the Developer's Works when, in Parramatta's opinion (acting reasonably), the Developer's Works are complete except for minor omissions and minor Defects which are non-essential and:



page 2

- (a) which do not prevent the Developer's Works from being reasonably capable of being used for their intended purpose;
- (b) which Parramatta determines the Developer has reasonable grounds for not promptly rectifying; and
- (c) the rectification of which will not prejudice the convenient use of the land on which the Developer's Works were undertaken.

Consent Authority means the governmental agency having the function to determine a development application in respect of any Development of the Land.

Consumer Price Index means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Dealing has the meaning given to that term in clause 17.1.

Dedicated Land means the land described in Item 4 of Schedule 1.

Defect means a defect arising from materials or workmanship or design other than:

- (a) minor shrinkage;
- (b) minor settlement cracks; or
- (c) normal wear and tear.

Defects Liability Period means the period of 12 months from the date on which the Developer's Works reach Completion.

Development has the meaning given to that term in the EPAA Act.

Developer's Works means works described in Item 5 of Schedule 1, as refined and developed in accordance with this planning agreement

Discretion has the meaning given to that term in clause 5.1.

Dispute Notice has the meaning given to that term in clause 16.4.

EPAA Act means the *Environmental Planning & Assessment Act* 1979 (NSW).

Gazette means the New South Wales Government Gazette.

Incoming party has the meaning given to that term in clause 17.1.

Index Number means:

- (a) the consumer price index (all groups) for Sydney published from time to time by the Australian Bureau of Statistics; or
- (b) if the Index Number no longer exists, it means an index that the Landlord decides reflects changes in the cost of living.

Item means an item in Schedule 1.

Land means the land described in Item 1 of Schedule 1.



Law means:

- (a) the common law including the principles of equity; and
- (b) the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, or consents by a governmental agency.

Minister means the minister of the Crown responsible for administration of the EPAA Act.

Monetary Contribution means the amount stated in Item 6 of Schedule 1 adjusted from time to time under Clause 14.2.

New Law means a Law that is amended, varied or changed or a new Law either of which comes into force on or after the date of this planning agreement.

Occupation Certificate means a certificate referred to in section 109C(1)(b) of the EPAA Act.

Parramatta LEP means the Parramatta Local Environmental Plan 2011.

Planning Agreement means this document and includes all schedules and annexures to it.

Planning Proposal means the application described in Item 2 of Schedule 1.

Prescribed Rate means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 as the rate of interest on judgment debts, calculated daily and compounded on the last day of each month.

Public Benefits means the public benefits described in Item 3 of Schedule 1 to be delivered under this planning agreement.

Publish means any form of publication necessary to effect the acquisition of the Land in accordance with law including in the Gazette, and **Publication** and **Publishing** have corresponding meanings.

Quarter means each consecutive period of three months (or part of it) ending on the respective last days of March, June, September and December.

Register means the Torrens Title register held by the New South Wales office of Land and Property Information.

Respondent has the meaning given to that term in clause 16.

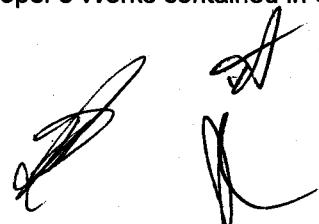
Review Date means each anniversary of the date of this planning agreement.

Schedule means a schedule to this planning agreement.

Security means an unconditional and irrevocable bank guarantee or bank guarantees for the Security Amount issued by a trading bank or other financial institution acceptable to Parramatta which does not have an expiry date and is otherwise on terms and conditions acceptable to Parramatta.

Security Amount means the amount stated in Item 7 of Schedule 1 adjusted from time to time under clause 15.2.

Works Plan means the sketch plan relating to the Developer's Works contained in Schedule 2.



page 4

4. Interpretation

4.1 Governing Law and Jurisdiction

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

4.2 Persons

In this planning agreement, a reference to:

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

4.3 Joint and Several

If a party consists of more than one person, this planning agreement binds them jointly and each of them severally.

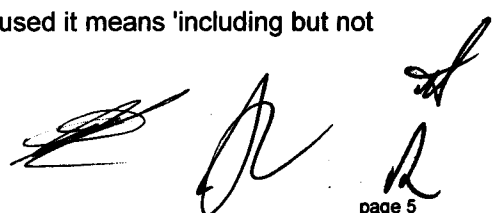
4.4 Legislation

In this planning agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

4.5 Clauses and Headings

In this planning agreement:

- 4.5.1 a reference to this planning agreement or other document includes this planning agreement or the other document as varied or replaced regardless of any change in the identity of the parties;
- 4.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this planning agreement all of which are deemed part of this planning agreement;
- 4.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 4.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this planning agreement;
- 4.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- 4.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation';



- 4.5.7 a reference to **governmental agency** means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, municipal, local, judicial or regulatory entity, agency, instrumentality, authority, court, commission, tribunal or statutory corporation having jurisdiction over or in respect of the Land or its use or both; and
- 4.5.8 a reference to any notice, claim, demand, consent, agreement, approval, authorisation, specification, direction, disclosure, notification, request, communication, appointment, or waiver being given or made by a party to this Agreement is a reference to its being given or made in writing, and the expression **notice** includes any of the foregoing.

4.6 Severance

- 4.6.1 If a provision in this planning agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.
- 4.6.2 If it is not possible to read down a provision as required in this clause 4.6, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or any other provision of this planning agreement.

4.7 Business Day

If a payment or other act is required by this planning agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

4.8 Number and Gender

In this planning agreement, a reference to:

- 4.8.1 the singular includes the plural and vice versa; and
- 4.8.2 a gender includes the other genders.

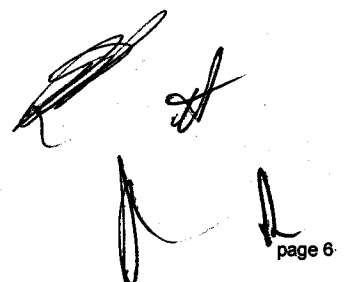
5. No Fetter

5.1 Discretion

This planning agreement is not intended to operate to fetter, in any unlawful manner:

- 5.1.1 the sovereignty of the Parliament of the State of New South Wales to make any Law;
- 5.1.2 the power of the executive government of the State of New South Wales to make any statutory rules; or
- 5.1.3 the exercise of any statutory power or discretion of any Minister of the State of New South Wales or any governmental agency (including Parramatta),

(all referred to in this planning agreement as a '**Discretion**').



page 6

5.2 No Fetter

No provision in this planning agreement is intended to, or does, constitute any unlawful fetter of any Discretion. If, contrary to the operation of this clause 5, any provision of this planning agreement is held by Court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the parties agree:

- 5.2.1 they will take all practice steps, including the execution of any further documents to ensure the objective of this clause 5 is substantially satisfied;
- 5.2.2 in the event that clause 5.1 cannot be achieved without giving rise to unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this planning agreement has full force and effect; and
- 5.2.3 to endeavour to satisfy the common objectives of the parties in relation to the provision of this planning agreement which is held to be an lawful fetter to the extent that is possible having regard to the relevant Court judgement.

5.3 Conflict

In the event of any conflict between the exercise of any Discretion and the performance or obligations under this planning agreement, the former prevails.

6. Registration

6.1 Procure Registration

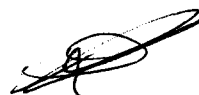
The Developer must:

- 6.1.1 procure registration of this planning agreement on the Register pertaining to the Land no later than 20 Business Days after the date of this planning agreement including obtaining the consent of any mortgagee or other person who has an interest in the Land; and
- 6.1.2 deliver to Parramatta a title search of the Land confirming registration of this planning agreement.

6.2 Effect of Registration

The parties agree and acknowledge that:

- 6.2.1 if any of the Land is subdivided by other than a strata subdivision, then all of the obligations of this planning agreement are jointly and severally binding on, and enforceable against, the owner of each subdivided parcel of land from time to time, on whose title this planning agreement is registered, as if each owner for the time being had entered into this planning agreement until the Public Benefits have been delivered to Parramatta in accordance with this planning agreement; and
- 6.2.2 if any of the Land is strata subdivided, then all of the obligations of this planning agreement do not jointly and severally bind any person other than the Developer who becomes the owner of a strata lot created as a result of the strata subdivision of the Land.



6.3 Release

Parramatta agrees to provide a release and discharge of this planning agreement with respect to any part of the Land if the Developer requests a release and discharge of this planning agreement (whether in full or part) and:

- 6.3.1 in the case of a request for a full release and discharge, the Developer has complied with all it's obligations under this planning agreement to Parramatta's satisfaction; or
- 6.3.2 in the case of a request for partial release and discharge, the Developer has, at the time of the request complied with it's obligations under this planning agreement to Parramatta's satisfaction to the extent that they effect that part of the Land to which the partial release relates.

7. Review

7.1 Review

This planning agreement may be reviewed or modified by agreement of the parties using their best endeavours and acting in good faith.

8. EPAA Act Application

8.1 Sections 94, 94A and 94EF of the EPAA Act

Section 94, 94A and 94EF of the EPAA Act apply to any Development of the Land and their operation is not affected by this planning agreement.

8.2 Benefits

The benefits obtained by Parramatta under this planning agreement are not to be taken into consideration in determining any development contribution under section 94 or section 94A of the EPAA Act in respect of any Development of the Land.

9. Public Benefits

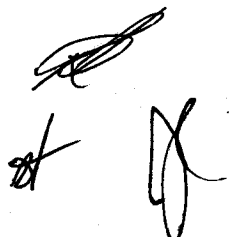
9.1 Delivery

The Developer must, at no cost to Parramatta, do all things required to deliver the Public Benefits in accordance with this planning agreement.

10. Dedicated Land

10.1 Dedication of Land

The Developer must do (or procure to be done) all things required to dedicate the Dedicated Land to Parramatta (including land subdivision and transfer of ownership in fee simple) prior to the issue of any Occupation Certificate (interim or otherwise) in respect of any Development of the Land.



page 8

10.2 Directions

The Developer must comply with any reasonable directions given by Parramatta in respect of the dedication of the Dedicated Land to Parramatta.

11. Design of the Developer's Works

11.1 Definition of Scope

The parties acknowledge and agree that further design detail and refinement of the Developer's Works is necessary having regard to the following:

- 11.1.1 conditions reasonably affecting the Developer's Works that were not reasonably capable of identification on or before the date of this planning agreement;
- 11.1.2 the extent to which the design of any part of the Developer's Works has been completed to Parramatta's reasonable satisfaction (in its capacity as party to this document and not as a governmental agency);
- 11.1.3 any or all policies, procedures and standards identified in the description of the Developer's Works; and
- 11.1.4 the condition of any other permit or approval that is required in order to carry out, and complete the Developer's Works.

11.2 Developer to Prepare

Before making application for a Construction Certificate in connection with any Development, the Developer must prepare detailed plans and specifications for the Developer's Works and deliver those plans and specifications to Parramatta for approval. The Developer must:

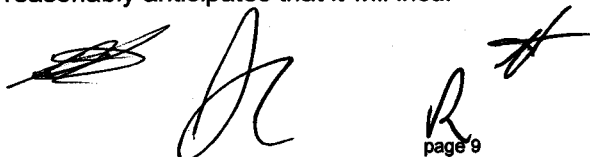
- 11.2.1 consult with Parramatta in connection with the preparation of the detailed plans and specifications; and
- 11.2.2 ensure that the Developer's Works are designed in a manner so that they are fit for purpose, and suitable for their intended use.

11.3 Parramatta to Respond

- 11.3.1 Parramatta must promptly give the Developer a notice stating whether the detailed plans and specifications delivered under clause 11.2 are satisfactory or unsatisfactory.
- 11.3.2 Parramatta must include in any notice given under clause 11.3.1 advising that the detailed plans and specifications are unsatisfactory, further information and comments (as the case may be) that explains the basis for Parramatta's opinion and the modifications required in order for them to be considered satisfactory.
- 11.3.3 The Developer must promptly amend the proposed design to take into account the further information and comments given by Parramatta in a notice given under clause 11.3.2.

11.4 Failure to Prepare

- 11.4.1 Parramatta may make an appropriation from the Security for the purposes of paying all costs and expenses Parramatta reasonably anticipates that it will incur



(or actually does incur) in the preparation of detailed plans and specifications for the Developer's Works if the Developer:

- (a) does not prepare and deliver the detailed plans and specifications to Parramatta in accordance with clause 11.2; or
- (b) does not within 6 months of being given a notice under clause 11.3 deliver amended plans and specifications that take into account the further information and comments contained in the notice given under clause 11.3.

11.4.2 Parramatta must give the Developer a notice stating the amount of any appropriation from the Security made under clause 11.4.1 promptly after doing so.

11.5 Valuation of the Developer's Works

11.5.1 Contemporaneously with the detailed plans and specifications given to Parramatta under clause 11.2, the Developer must deliver to Parramatta a detailed costs estimate in respect of the Developer's Works. The detailed costs estimate must:

- (a) be in a form Parramatta considers reasonably acceptable; and
- (b) be prepared by a duly qualified quantity surveyor approved by Parramatta (acting reasonably).

11.5.2 In respect of the costs estimate delivered to Parramatta under clause 11.5.1, Parramatta (acting reasonably) may:

- (a) reject items stated in the costs estimate which are not directly related to the Developer's Works;
- (b) require substantiation for the costs of items where Parramatta considers the amount estimated is excessive or inaccurate in the circumstances; or
- (c) require an adjustment to the costs estimate to reflect a variation to the design not reflected in the costs estimate.

11.5.3 The parties acknowledge and agree that the value of the Developer's Works may be adjusted having regard to the valuation process set out in this clause 11.5.

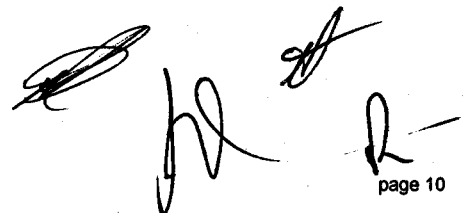
11.5.4 The Developer is not entitled to change or reduce the scope of the Developer's Works by reason only that the costs incurred in the execution of the Developer's Works are greater than:

- (a) the estimated costs stated in the cost estimate given to Parramatta under this clause 11.5; or
- (b) any amount identified in this planning agreement.

11.6 Construction plans

11.6.1 The Developer must complete construction drawings in accordance with the design developed and approved by Parramatta under this clause 11.

11.6.2 The construction drawings prepared for the purposes of this clause 11.6 may be prepared simultaneously (and comprise the same detailed plans and specifications) as those submitted for approval under clause 11.2.



page 10

11.7 Variation or Approval

- 11.7.1 Parramatta may, by giving the Developer a notice, approve, vary or direct a reasonable variation to the construction design drawings for the Developer's Works so as to reflect the documents or standards (as the case may be) set out in this planning agreement.
- 11.7.2 The Developer must comply with any reasonable direction given by Parramatta under clause 11.7.1 in respect of the design and implementation of the Developer's Works.

12. Execution of the Developer's Works

12.1 Approvals and Consents

- 12.1.1 The Developer must, at its own cost, obtain all approvals and consents from any relevant governmental agencies having jurisdiction over, or in respect of, the Developer's Works.
- 12.1.2 Before commencing the Developer's Works, the Developer must give Parramatta copies of all approvals and consents relating to the Developer's Works.

12.2 Construction Work

The Developer must, at its cost:

- 12.2.1 carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works issued by any relevant governmental agencies having jurisdiction over, or in respect of, the Developer's Works;
- 12.2.2 ensure that the Developer's Works are conducted in a proper and workmanlike manner so that they are structurally sound, fit for purpose, and suitable for their intended use; and
- 12.2.3 promptly notify Parramatta of any delays which it experiences in completing the Developer's Works.

12.3 Inspection of Works

- 12.3.1 Parramatta may (but is not obliged) at reasonable times and on reasonable notice inspect the Developer's Works during the course of construction.
- 12.3.2 Parramatta will promptly notify the Developer of any material or significant Defect, error or omission in the Developer's Works identified during or as the result of such inspection. The parties expressly agree that any failure to identify a Defect, error and omission, will not be construed as amounting to an acceptance by Parramatta of that Defect, error or omission.

12.4 Indemnity

The Developer indemnifies and releases Parramatta against all damage, expense, loss or liability of any nature suffered or incurred by Parramatta arising from any act or omission by the Developer (or any person engaged or employed by the Developer) in connection with:

- 12.4.1 the conduct of the Developer's Works; and



12.4.2 the use and occupation of the Works Site.

12.5 Date of Completion of Works

The Developer must ensure that the Developer's Works reach Completion on or before the date on which any Occupation Certificate (interim or otherwise) is issued in respect of any Development of the Land.

12.6 Completion

If the Developer (acting reasonably) considers that the Developer's Works have reached Completion, the Developer must give Parramatta a notice that includes:

- 12.6.1 a statement from the person with direct responsibility, carriage and supervision of that work that, in their opinion, the Developer's Works have reached Completion;
- 12.6.2 a statement from a duly qualified certifier that, in their opinion, the Developer's Works have reached Completion;
- 12.6.3 a statement from the person with direct responsibility carriage and supervision of that sets out the total amount of costs and expenses actually incurred by the Developer in the conduct of the Developer's Works and a certification from a certified practising accountant or auditor that the statement is accurate and complete;
- 12.6.4 copies of any warranties, guarantees, maintenance information or other material reasonably required for the ongoing nature of the work; and
- 12.6.5 at least 3 sets of the "as built" drawings of the Developer's Works, including 1 set in electronic format.

12.7 Parramatta Final Inspection

- 12.7.1 Parramatta must inspect the Developer's Works within 20 Business Days of receiving notice from the Developer pursuant to clause 12.6. Promptly after such an inspection Parramatta must give the Developer a notice that states whether Parramatta:
 - (a) concurs that Completion has been achieved; or
 - (b) disagrees that Completion has been achieved and identifies the errors or omissions which in Parramatta's opinion prevent Completion; or
 - (c) issue a notice of the nature identified in clause 12.8.
- 12.7.2 Nothing in this clause 12.7 will be constructed to reduce or waive in any manner the Developer's responsibility to correct minor Defects of minor omissions, whether or not these are identified by Parramatta.

12.8 Non-completion of Developer's Works

- 12.8.1 Parramatta may permit the Developer not to complete the Developer's Works (or part of them) by issuing a notice to the Developer, expressly stating that completion of the items identified in that notice is not required to achieve Completion.
- 12.8.2 If the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under this planning agreement and all approvals

and consents relating to the Developer's Works issued by any relevant governmental agencies having jurisdiction over or in respect of the Developer's Work, then Parramatta may complete the Developer's Works in such manner as Parramatta thinks fit.

12.8.3 Parramatta may make appropriations from the Security:

- (a) in anticipation of costs and expenses Parramatta reasonably considers will be incurred in connection with the conduct of the Developer's Works; or
- (b) to reimburse Parramatta for costs and expenses it has actually incurred in connection with the conduct of the Developer's Works.

12.8.4 To the extent that expenditure incurred by Parramatta in the conduct of the Developer's Works exceeds the Security Amount available for appropriation at the relevant time, Parramatta may recover any such shortfall from the Developer as a debt due.

13. Defects Liability

13.1 Defects in the Developer's Works

If Parramatta notifies the Developer of a Defect in the Developer's Works within the Defects Liability Period, the Developer must remedy that Defect to Parramatta's satisfaction, within a period allowed by Parramatta (acting reasonably).

13.2 Security for Defects Liability Period

13.2.1 The Developer agrees that Parramatta is not required to release the Security to the Developer before the expiration of the Defects Liability Period.

13.2.2 If the Developer does not rectify any Defect in the Developer's Works within 20 Business Days after being notified of the Defect, then Parramatta may rectify the Defect notified to the Developer and at its election:

- (a) give the Developer a notice stating the amount of the costs and expenses reasonably anticipated to be incurred (or actually incurred) in the rectification of the notified Defect and the Developer must pay to Parramatta the amount stated in the notice no later 10 Business Days after being given such notice; or
- (b) make an appropriation from the Security for an amount equal to the costs and expenses reasonable anticipated to be incurred (or actually incurred) in the rectification of the notified.

14. Monetary Contribution

14.1 Monetary Contribution Payment

14.1.1 The Developer covenants to pay the Monetary Contribution to Parramatta.

14.1.2 The Developer must pay the Monetary Contribution by way of a single instalment on or before the date on which the first Occupation Certificate (interim or otherwise) is issued in respect of any Development on the Land.



14.1.3 All payments of the Monetary Contribution or other moneys payable by the Developer under this planning agreement must be without deductions and free of any right of set off to Parramatta (using a direct debit payment method or such other payment method as Parramatta reasonably requires) as Parramatta may in otherwise direct.

14.1.4 Parramatta need not make demand for any amount payable by the Developer unless this planning agreement says that demand must be made.

14.2 Monetary Contribution Adjustment

The Monetary Contribution is to be adjusted on each Review Date in accordance with the following calculation:

$$A = \frac{B \times D}{C}$$

where:

A is the adjusted Monetary Contribution applicable from the relevant Review Date;

B is the Monetary Contribution applicable immediately prior to the relevant Review Date;

C is the Index Number for the Quarter ending immediately before the date of this planning agreement or the last prior Review Date (whichever is the later); and

D is the Index Number for the Quarter ending immediately before the relevant Review Date.

14.3 Application of Monetary Contribution

Parramatta agree to apply the monetary contribution as follows:

A \$375,000 towards a shared pedestrian/cycle bridge over Parramatta River.

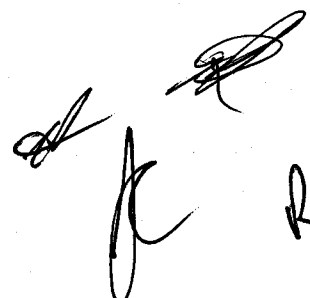
B \$150,000 towards local road improvements.

or for any other public domain improvements.

15. Security

15.1 Delivery

On the date of the first Construction Certificate in respect of any Development of the Land, the Developer must deliver the Security to Parramatta as security for the performance by the Developer of its obligations under this planning agreement.



15.2 Security Amount Adjustment

The Security Amount is to be adjusted on each Review Date in accordance with the following calculation:

$$A = \frac{B \times D}{C}$$

where:

- A is the adjusted Security Amount applicable from the relevant Review Date;
- B is the Security Amount applicable immediately prior to the relevant Review Date;
- C is the Index Number for the Quarter ending immediately before the date of this planning agreement or the last prior Review Date (whichever is the later); and
- D is the Index Number for the Quarter ending immediately before the relevant Review Date.

15.3 Security Substitution or Top up

The Developer agrees to give Parramatta a substitute or supplement Security for the revised Security Amount no later than 20 Business Days after each Review Date.

15.4 Appropriation

The Developer acknowledges and agrees that:

- 15.4.1 Parramatta may make an appropriation from the Security to compensate or reimburse Parramatta for loss it has suffered or the costs and expenses it has incurred as a result of the breach of this planning agreement by the Developer; and
- 15.4.2 Parramatta may make an appropriation from the Security despite any objection, claim or direction by the Developer to the contrary.

15.5 Replacement bank guarantee

At Parramatta's request, the Developer must provide an additional or supplement Security for the Security Amount if there has been appropriation that results in the value of the Security held by Parramatta after appropriation being less than Security Amount.

15.6 Security Amount reduction

The parties agree that the Security Amount will be reduced in the following manner:

- 15.6.1 upon payment of the Monetary Contribution, the Security Amount is reduced by the amount of the Monetary Contribution paid by the Developer and the Developer may deliver a replacement Security to Parramatta for the reduced amount; and
- 15.6.2 upon the Developer's Works reaching Completion, the Security Amount is reduced to an amount equal to 10% of the cost estimate of the Developer's Works

approved by Parramatta under clause 11.5 or, if the cost estimate of the Developer's Works submitted by the Developer under clause 11.5 is disputed and referred to dispute resolution under clause 16, the amount determined as a result of the dispute resolution process and the Developer may deliver a replacement Security to Parramatta for the reduced amount.

15.7 Security return

Parramatta must return the Security to the Developer without delay after the expiration of the Defects Liability Period if there is no subsisting default by the Developer under this planning agreement that has not been waived by Parramatta.

16. Dispute Resolution

16.1 Notice of Dispute

If a party claims that a dispute has arisen under this planning agreement (**Claimant**), it must give notice to the other party (**Respondent**) stating the matters in dispute and designating as its representative a person to negotiate the dispute (**Claim Notice**).

16.2 Claim Notice Response

Within 20 Business Days of receiving the Claim Notice, the Respondent must notify the Claimant of its representative to negotiate the dispute.

16.3 Negotiation

The nominated representatives must:

16.3.1 meet to discuss the matter in good faith within 10 Business Days after the Respondent has given a notice advising of its representatives; and

16.3.2 use reasonable endeavours to settle or resolve a dispute within 15 Business Days after they have met.

16.4 Further Notice

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a notice calling for the termination of the dispute (**Dispute Notice**).

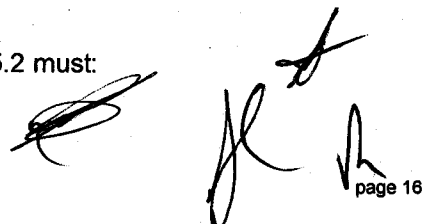
16.5 Mediation

The parties agree that a dispute will be mediated if it is the subject of a Dispute Notice, in which case:

16.5.1 the parties must agree to the terms of reference for the mediation within 5 Business Days of receipt of the Dispute Notice, the terms shall include a requirement that the mediation rules at the Institute of Arbitrators and Mediators Australia (NSW Chapter) applies;

16.5.2 the mediator will be agreed between the parties, or failing agreement within 5 Business Days of receipt of the Dispute Notice, either party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;

16.5.3 the mediator appointed pursuant to clause 16.5.2 must:



Handwritten signatures and initials are present at the bottom right of the page, including a large signature and several initials.

- (a) have reasonable qualifications and practical experience in the area of the dispute; and
 - (b) have no interest or duty which conflicts or may conflict with his function as mediator, he being required to fully disclose and such interest or duty before his appointment;
- 16.5.4 the mediator will be required to undertake to keep confidential all matters coming to his knowledge by reason of his appointment and performance of his duties;
- 16.5.5 the parties must within 5 Business Days of receipt of the Dispute Notice notify each other if their representatives will be involved in the mediation;
- 16.5.6 the parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which the subject of the mediation settlement for the purpose of enforcing that mediation settlement;
- 16.5.7 in relation to costs and expenses:
 - (a) each party will bear their own professional and expert costs incurred in connection with the mediation; and
 - (b) the costs of the mediator will be shared equally by the parties unless the Mediator determines a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full cost of the mediation be borne by that party.

16.6 Litigation

If a dispute is not finally resolved in accordance with this clause 16, either party is at liberty to litigate the dispute.

16.7 Continue to Perform Obligations

Each party must continue to perform its obligations under this planning agreement, notwithstanding the existence of a dispute.

17. Assignment and Other Dealings

17.1 Land Owner Dealings

Prior to registration of the planning agreement under clause 6, the Developer must not sell, transfer, assign, mortgage, lease or otherwise deal with (**Dealing**) its right, title and interest in the Land (if any) or its rights and obligations under this planning agreement, or allow any interest in them to arise or be varied, in each case, without Parramatta's consent and unless, before any such sale, transfer, assignment, charge, encumbrance or novation, the Developer:

- 17.1.1 gives Parramatta not less than 10 Business Days notice of the proposed Dealing; and
- 17.1.2 procures that the transferee, assignee or novatee (**incoming party**) signs and delivers to Parramatta prior to any such Dealing taking effect, a deed in favour of the Developer in form and substance acceptable to Parramatta whereby:
 - (a) the incoming party becomes contractually bound to perform all of the Developer's obligations (including obligations which ay have arisen before

the transfer, assignment or novation takes effect) and have the benefit of all the Developer's rights under this planning agreement; and

- (b) the Developer agrees to pay the legal costs and expenses incurred by Parramatta in connection with the negotiation, preparation and signature of such deed.

17.2 Restriction on Transfer of Shares

If the Developer is a corporation (other than a corporation listed on the Australian Stock Exchange (ASX)), a change in effective control of the Developer (by way of change in shareholding ownership or otherwise) is deemed to be a dealing for the purposes of clause 17.1 and the requirements of clause 17.1 apply.

17.3 Sale Notification

The Developer must give Parramatta a written notice advising Parramatta of the sale or transfer of the Land no later than 10 business days after any such sale or transfer.

18. Costs, GST and Interest

18.1 Preparation Costs

No later than 10 Business Days after being given a demand by Parramatta, the Developer must pay all Parramatta's reasonable legal and administrative costs and expenses in relation to:

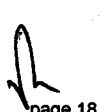
- 18.1.1 the negotiation, preparation and signature of this planning agreement;
- 18.1.2 the giving effect to this planning agreement;
- 18.1.3 any enforcement of the rights conferred under this planning agreement; and
- 18.1.4 the costs of any expert determination carried out under this planning agreement.

18.2 Advertising Costs

The Developer agrees to pay or reimburse the costs and expenses incurred by Parramatta in connection with the advertising and exhibition of this planning agreement in accordance with the EPAA Act.

18.3 GST

- 18.3.1 In this clause 18.3 words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.
- 18.3.2 Except as otherwise provided by this clause 18.3, all consideration payable under this planning agreement in relation to any supply is exclusive of any GST.
- 18.3.3 If GST is payable in respect of any supply made by a supplier under this planning agreement, subject to clause 18.3.4 the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this planning agreement.
- 18.3.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under this clause 18.3.3.



page 18

18.4 Interest

If the Developer does not pay any other moneys payable under this planning agreement on time, the Developer must pay interest at the Prescribed Rate on the outstanding amount for the period from the day the unpaid money was due until it is paid. The interest must be paid to Parramatta no later than 10 Business Days after Parramatta has given the Developer a demand for any interest.

19. Notices

19.1 Service of Notice

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

- 19.1.1 personally on the person;
- 19.1.2 by leaving it at the person's current address for service;
- 19.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 19.1.4 by facsimile to the person's current number for service.

19.2 Particulars for Service

- 19.2.1 The particulars for service of each party are set out on page one of this planning agreement under the heading 'parties'.
- 19.2.2 A party may change the address, facsimile or email number for service by giving notice to the other party.
- 19.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

19.3 Time of Service

A notice or other communication is deemed served:

- 19.3.1 if served personally or left at the person's address, upon service;
- 19.3.2 if posted within Australia to an Australian address, 2 Business Days after posting and in any other case, 5 Business Days after posting;
- 19.3.3 if served by facsimile, subject to clause 19.3.4, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- 19.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

20. Approvals and Consents

The parties acknowledge that:



- 20.1.1 except as otherwise stated in this planning agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this planning agreement in that party's absolute discretion and subject to any conditions determined by the party;
- 20.1.2 a party is not obliged to give its reasons for giving or withholding approval or consent or for giving approval or consent subject to conditions; and
- 20.1.3 this planning agreement does not impose any obligations on a governmental agency to:
 - (a) grant a development consent where it is acting as a Consent Authority; or
 - (b) exercise any function under any Laws (including the EPAA Act).

21. Representations and Warranties

The parties represent and warrant that they have the power to enter into this planning agreement and comply with their obligations under this planning agreement and that entry into this planning agreement will not result in the breach of any Law.

22. New Laws

If the Developer is obliged by a New Law to do something to pay an amount which it is already contractually obliged to do or pay under this planning agreement then, to the extent only that the relevant obligation is required under both the New Law and this planning agreement, compliance with the New Law will constitute compliance with the relevant obligation under this planning agreement.

23. General

23.1 Amendment

This planning agreement may only be varied or replaced by a planning agreement duly signed by the parties.

23.2 Entire Understanding

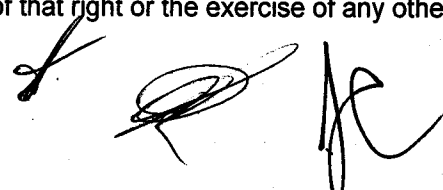
This planning agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this planning agreement and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

23.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this planning agreement.

23.4 Waiver and Exercise of Rights

- 23.4.1 A single or partial exercise or waiver of a right relating to this planning agreement does not prevent any other exercise of that right or the exercise of any other right.



Page 20

- 23.4.2 No party will be liable for any loss or expenses incurred by the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

23.5 Time of the Essence

Time is of the essence as regards all dates, periods of time and times specified in this planning agreement.

23.6 No Relationship

- 23.6.1 No party to this planning agreement has the power to obligate or bind any other party.
- 23.6.2 Nothing in this planning agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties.
- 23.6.3 Nothing in this planning agreement will be deemed to authorise or empower a party to act as agent for the other party.



Signing Page

Executed by the parties

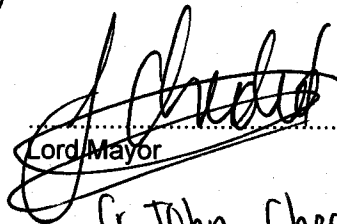
THE OFFICIAL SEAL of PARRAMATTA
CITY COUNCIL was affixed in the presence of
, and the sealing is
attested by:



Chief Executive Officer

ROBERT DAVID LANG

Name of Chief Executive Officer

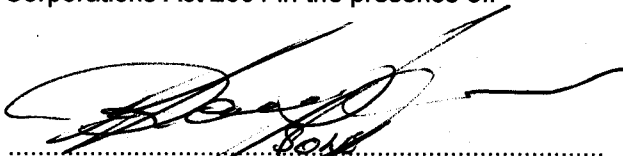


Lord Mayor

Cr John Chedid

Name of Lord Mayor

EXECUTED by EMIN PTY LIMITED in
accordance with Section 127 of the
Corporations Act 2001 in the presence of:



Signature of Secretary/Director

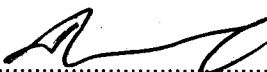
RAKAMPFER

Name of Secretary/Director

Signature of Director

Name of Director

EXECUTED by NGP INVESTMENTS (NO. 2)
PTY LIMITED in accordance with Section 127
of the Corporations Act 2001 in the presence
of:



Signature of Secretary/Director

DANIEL RYAN

Name of Secretary/Director



Signature of Director

NICHOLAS POLITIS




Name of Director

Schedule 1

Reference Schedule

Item	Name	Description
1	Land	<p>The land comprised in:</p> <ul style="list-style-type: none"> • Lot 1 in Deposited Plan 663258; and • Lot C in Deposited Plan 388870, and • Lot B in Deposited Plan 334882, and • Lots 2, 3, 4, 5, & 6, Section R in Deposited Plan 1249 and • Lot 1 in Deposited Plan 836932 <p>and known as 2-8 River Road West, Parramatta, NSW.</p>
2	Planning Proposal	<p>The amendment to Parramatta Local Environmental Plan 2011 in relation to land at 2-8 River Road West, Parramatta to:</p> <ul style="list-style-type: none"> • rezone the land from IN1 General Industrial to part B4 Mixed Use and part RE1 Public Recreation. • permit a maximum building height of 37 metres. • permit a maximum floor space ratio of 3.4:1. <p>as generally detailed in Planning Proposal made to the Department of Planning & Infrastructure on 26 April 2012.</p>
3	Public Benefits	The dedication of the Dedicated Land, the completion of the Developer's Works and the payment of the Monetary Contribution.
4	Dedicated Land	That part of the Land shown in the plan contained in Schedule 3.
5	Developer's Works	The works described and illustrated in Schedule 2.
6	Monetary Contribution	\$525,000.
7	Security Amount	<p>An amount equal to the sum of the Monetary Contribution and the cost estimate of the Developer's Works:</p> <ul style="list-style-type: none"> • approved by Parramatta under clause 11.5; or • if the cost estimate of the Developer's Works submitted by the Developer under clause 11.5 is

		disputed and referred to dispute resolution under clause 16, the amount determined as a result of the dispute resolution process.
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at 
 

Schedule 2

Developer's Works

The Developer's Works are described below:

Weed removal, revegetation & embellishment of land for open space purposes along the River Foreshore

Weed removal, revegetation and embellishment works along that part of the Land as identified in the Works Plan including:

- a) Prior to commencement of any site disturbance including weed removal, earthworks and the like, a Flora and Fauna investigation is to be undertaken by a suitably qualified professional to determine whether the site contains any threatened or endangered species. The recommendations of the report are to be approved by Parramatta prior to any work commencing; and
- b) removal of all existing concrete and built structures; and
- c) removal and remediation of any soil contamination to Parramatta's satisfaction, and in accordance with requirement of all relevant Laws; and
- d) removal of any weed infestations by persons having qualifications or expertise or both in bush regeneration; and
- e) all areas of foreshore embankment should remain in natural condition in terms of grade and vegetative cover; and
- f) landscaping/regeneration of the land using only endemic species to be undertaken in accordance with plans and specifications approved Parramatta. Any landscape management plan prepared for these purposes must detail the ongoing management and weed removal of the area for a minimum period of 24 months after works completion; and
- g) construction of a three (3) metre wide shared pedestrian and cycle path in accordance with Parramatta's requirements (including RMS cycle guidelines. Construction design should also enable use of the path by vehicles including maintenance and emergency vehicles; and
- h) provision of low lux environmentally sensitive lighting to pedestrian standard (P2). lighting to minimise impact on migratory birds and native wildlife; and
- i) provision of public seating, waste bins and fencing along the river foreshore area to Parramatta's satisfaction; and
- j) provision of public art or interpretive signage along the river foreshore to Parramatta's satisfaction; and
- k) the shared path and seating area is to meet the requirements of the Disability Discrimination Act; and



page 25

- l) public foreshore area and levels must be designed to deal with the flooding levels that affect the site and integrate with the broader foreshore network adjoining the site.
- m) all works, including grades and cross falls are to be in accordance with Parramatta's standard drawing specifications and relevant Australian Standards. Design and material choice must have regard to probable flooding over the site and is not to be adversely affected in the event of a flood; and
- n) the preparation and compliance with an erosion and sediment control plan and a site stormwater management plan that comply with Parramatta's requirements (including those stated in the Parramatta Development Control Plan 2011).

Seawalls and Riverbank

Protection and upgrade of the riverbank and seawalls including:

- a) all areas of foreshore embankment should remain in natural condition in terms of grade and vegetative cover; and
- b) all existing estuarine vegetation including mangroves, are not to be impacted upon (including removal, trimming etc). Where impact is required to enable repair/replacement of seawalls this will require a Part 7 Permit under the Fisheries Management Act (or equivalent) and the relevant regulation; and
- c) the further section of the foreshore (marked Area 3' on the Works Plan) that is severely undermined and continuing to actively erode is to be suitably retained through the provision of sandstone boulders along the base to a height of 1.5 metres (with at least one (1) metre above mean high water mark) in accordance with the Environmentally Friendly Seawalls Guide (NSW DECCW, 2009) and have a corresponding graded, vegetated batter up to the top of bank to ensure continuity with the adjoining natural foreshore; and
- d) any other sections of scoured foreshore not identified above shall be remediated in accordance with the Environmentally Friendly Seawalls Guide (NSW DECCW, 2009); and
- e) final design and location of all seawalls/batters to standards required by Parramatta and any other relevant governmental agency.

Through site link connecting River Road West to the River Foreshore

Construction of a through site link on the Land allowing members of the public to access River Road West and the river foreshore area to be dedicated under this planning agreement:

- a) in respect of the link, the location of the link is to be as shown on the Works Plan unless otherwise agreed between the parties; and
- b) in respect of the path, it is not less than 3m wide shared pedestrian and cycle path in the location shown on the Works Plan that complies with RMS cycle guidelines and is otherwise acceptable to Parramatta. The path design should also enable use of path by vehicles including maintenance and emergency vehicles; and

- c) in respect of the link and path, they must be publicly accessible 24 hours per day, seven (7) days per week; and
- d) in respect of the link and the path, they meet the requirements of the Disability Discrimination Act; and
- e) in respect of the link and the path, they include provision of low lux environmentally sensitive lighting to pedestrian standard (P2) and otherwise to Parramatta's satisfaction; and
- f) includes removal and remediation of any soil contamination to Parramatta's satisfaction, and in accordance with relevant legislation; and
- g) include removal of all existing concrete and built structures; and
- h) landscaping/regeneration of the land using only endemic species to be undertaken in accordance with plans and specifications approved Parramatta. Any landscape management plan prepared for these purposes must detailing the ongoing management and weed removal of the area for a minimum period of 24 months after works completion; and
- i) no fencing is to be installed that physically divides the through site link from adjoining land; and
- j) all works, including grades and cross falls are to be in accordance with Parramatta's standards and relevant Australian Standards. Design and material choice must have regard to probable maximum flooding over the site.

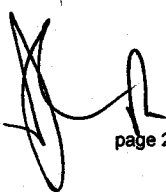


Contamination and Remediation

The land to be dedicated under this planning agreement must be free of contamination or, if contamination exists, remediated in accordance with State Environmental Planning Policy (SEPP) No. 55 Remediation of Land, NSW Planning *Managing Land Contamination Planning Guidelines* and AS4419-2003 (Soils for landscaping and garden use), and any other relevant legislation. This compliance certificate is to be issued by a suitably qualified person in accordance with the relevant Laws.

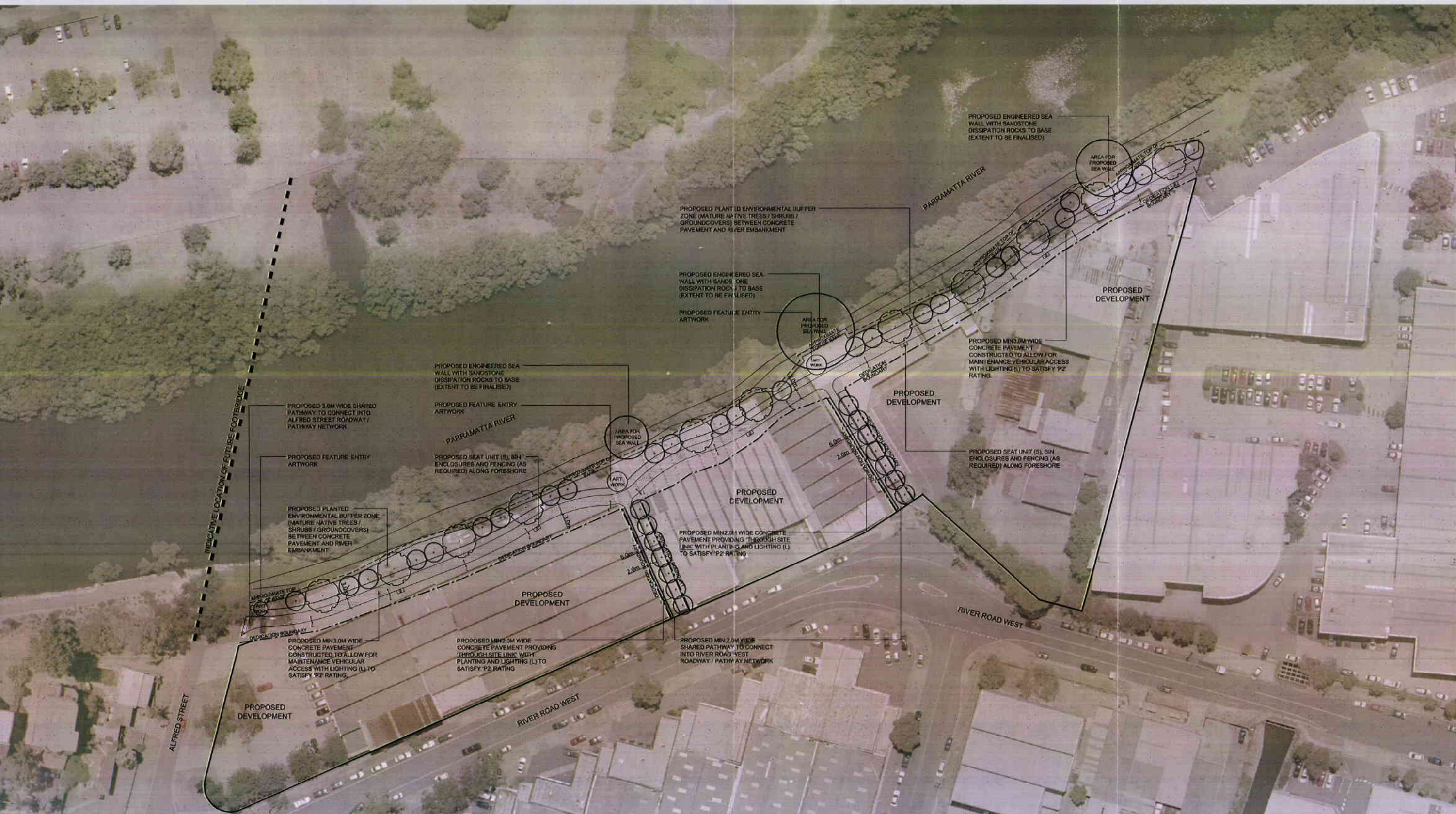
On Completion

On completion of all construction works the Developer is to submit to Council detailed Works-as-Executed drawings prepared by a Registered Surveyor showing the horizontal and vertical position of all constructed public domain works.

Works Plan



page 28



NOTE:

This concept plan is indicative only. This plan does not substitute the need for a landscape design; nor does it show all the necessary components required to complete the foreshore development landscape design. Any subsequent landscape plans will be subject to Council development requirements and approvals.

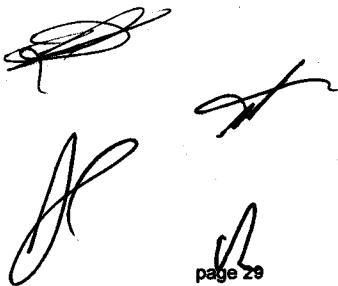


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RIVER ROAD WEST PARRAMATTA - FORESHORE DEVELOPMENT INDICATIVE FORESHORE CONCEPT PLAN

Schedule 3


Dedicated Land



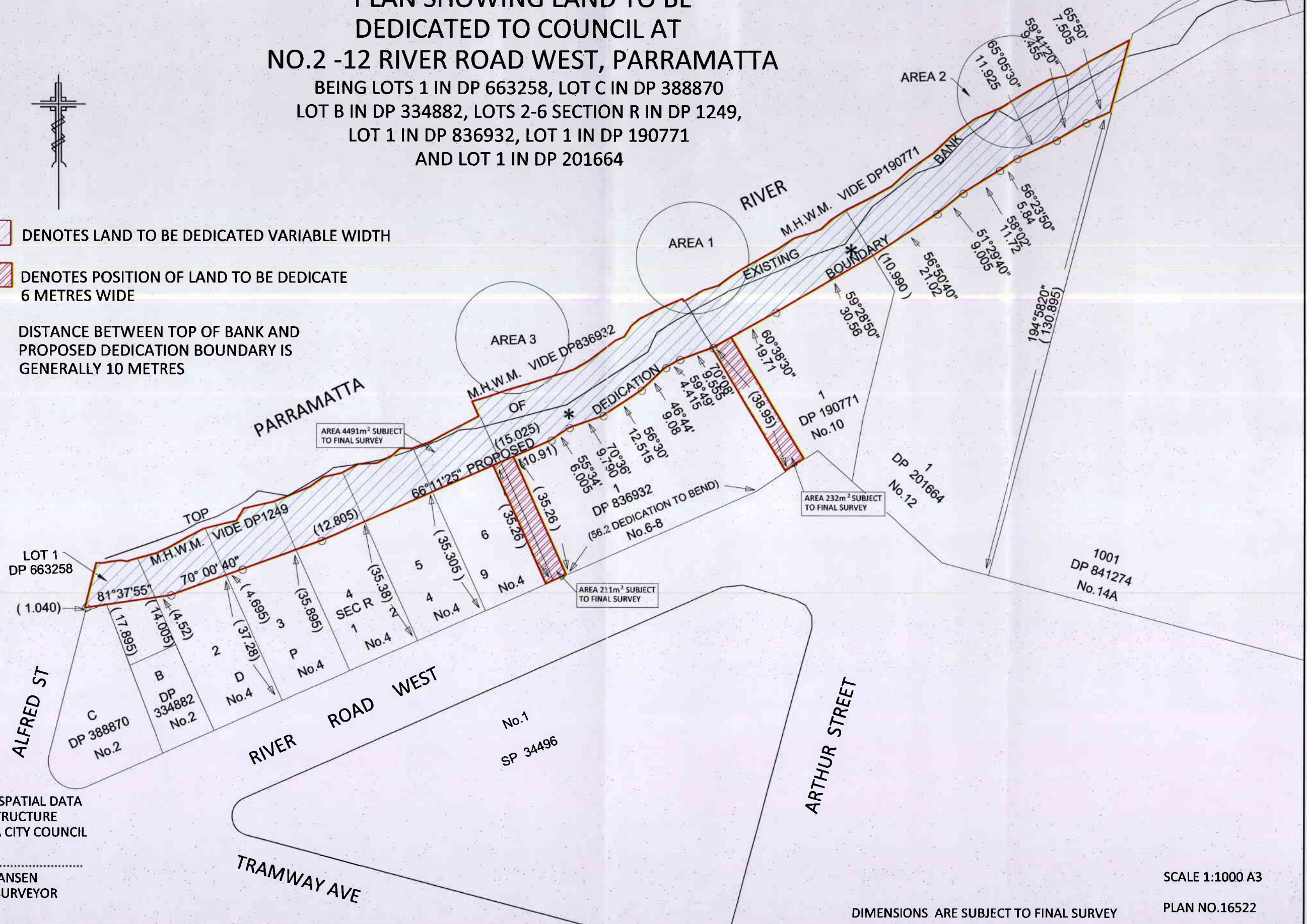
BEING LOTS 1 IN DP 663258, LOT C IN DP 388870
LOT B IN DP 334882, LOTS 2-6 SECTION R IN DP 1249,
LOT 1 IN DP 836932, LOT 1 IN DP 190771
AND LOT 1 IN DP 201664

BEING LOTS 1 IN DP 663258, LOT C IN DP 388870
LOT B IN DP 334882, LOTS 2-6 SECTION R IN DP 1249,
LOT 1 IN DP 836932, LOT 1 IN DP 190771
AND LOT 1 IN DP 201664



 DENOTES POSITION OF LAND TO BE DEDICATE
6 METRES WIDE

*** DISTANCE BETWEEN TOP OF BANK AND PROPOSED DEDICATION BOUNDARY IS GENERALLY 10 METRES**



PREPARED BY
SURVEY AND SPATIAL DATA
CIVIL INFRASTRUCTURE
PARRAMATTA CITY COUNCIL

ROSS JOHN HANSEN
REGISTERED SURVEYOR
8.6.2012

SCALE 1:1000 A3

PLAN NO.16522

DIMENSIONS ARE SUBJECT TO FINAL SURVEY

Endemic Species for Landscaping along Parramatta River, Parramatta

<i>Acmena smithii</i>	<i>Alphitonia excelsa</i>
<i>Alternanthera denticulata</i>	<i>Baumea juncea</i>
<i>Blechnum indicum</i>	<i>Callistemon salignus</i>
<i>Carex appressa</i>	<i>Casuarina glauca</i>
<i>Centella asiatica</i>	<i>Commelina cyanea</i>
<i>Crinum pedunculatum</i>	<i>Cupaniopsis anacardioides</i>
<i>Cynodon dactylon</i>	<i>Dianella caerulea</i>
<i>Entolasia marginata</i>	<i>Enydra fluctuans</i>
<i>Flagellaria indica</i>	<i>Gahnia clarkei</i>
<i>Geitonoplesium cymosum</i>	<i>Glochidion ferdinandi</i>
<i>Glochidion sumatranum</i>	<i>Hypolepis muelleri</i>
<i>Imperata cylindrica</i> var. <i>major</i>	<i>Isolepis inundata</i>
<i>Juncus kraussii</i> subsp. <i>australiensis</i>	<i>Juncus planifolius</i>
<i>Juncus usitatus</i>	<i>Lobelia alata</i>
<i>Lomandra longifolia</i>	<i>Lophostemon suaveolens</i>
<i>Maundia triglochinoides</i>	<i>Melaleuca alternifolia</i>
<i>Melaleuca ericifolia</i>	<i>Ficus rubiginosa</i>
<i>Melaleuca styphelioides</i>	<i>Myoporum acuminatum</i>
<i>Oplismenus imbecillis</i>	<i>Parsonsia straminea</i>
<i>Persicaria decipiens</i>	<i>Persicaria strigosa</i>
<i>Phragmites australis</i>	<i>Selliera radicans</i>
<i>Smilax australis</i>	<i>Stephania japonica</i> var. <i>discolor</i>
<i>Viola banksii</i>	<i>Eucalyptus robusta</i>